

THE CONSTITUTIONAL HISTORY OF ENGLAND

FROM THE ACCESSION OF HENRY VII
TO THE DEATH OF GEORGE II

BY HENRY HALLAM LL.D. F.R.A.S.

INCORPORATING THE AUTHOR'S LATEST ADDITIONS AND
CORRECTIONS AND ADAPTED TO THE
USE OF STUDENTS

BY SIR WILLIAM SMITH D.C.L. LL.D.

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THE STUDENT'S HISTORY OF THE MIDDLE AGES. By
HENRY HALLAM, LL.D., F.R.S. Incorporating in the Text the
Author's Latest Researches, with Additions from Recent Writers,
and adapted to the Use of Students. By Sir WILLIAM STUBBS,
BCL, LL.D.

PREFACE.

THE present Edition of the 'Constitutional History of England' has been undertaken for the same reasons and executed on the same plan as are explained in the Preface to the corresponding Edition of the 'History of the Middle Ages.' It has been brought into one volume by leaving out most of the notes at the foot of the pages, and by abbreviating some of the less important remarks; but the great bulk of the book remains unchanged, and nothing of importance has been omitted. The Editor has not considered himself at liberty to alter any of the opinions expressed by the Author, even where he differs from them; and it has been his aim to present the work as nearly as possible in the form in which he conceives the Author would have wished it to appear if he had himself prepared an Edition for the special use of Students. It has been thought advisable to print at length the Petition of Right and the Bill of Rights, of which Mr. Hallam gave only an abstract.

WM. SMITH.

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CONTENTS.

CHAP.	PAGE
I. ON THE ENGLISH CONSTITUTION FROM HENRY VII. TO MARY	1
NOTE TO CHAPTER I.	
Statute of Fines	32
II. ON THE ENGLISH CHURCH UNDER HENRY VIII., ED- WARD VI. AND MARY	54
III. ON THE LAWS OF ELIZABETH'S REIGN RESPECTING THE ROMAN CATHOLICS	59
NOTE TO CHAPTER III.	
The Oath of Supremacy	87
IV. ON THE LAWS OF ELIZABETH'S REIGN RESPECTING PRO- TESTANT NONCONFORMISTS	88
NOTE TO CHAPTER IV.	
Hooker's Ecclesiastical Polity	114
V. ON THE CIVIL GOVERNMENT OF ELIZABETH	118
NOTE TO CHAPTER V.	
Remonstrance of Judges against Illegal Commitments	148
VI. ON THE ENGLISH CONSTITUTION UNDER JAMES I.	140
VII. ON THE ENGLISH CONSTITUTION FROM THE ACCESSION OF CHARLES I. TO THE DISSOLUTION OF HIS THIRD PARLIA- MENT	192
NOTE TO CHAPTER VII.	
Petition of Right	213
ST. C. H. E.	b

the forms and principles of political regimen in these different nations became more divergent from each other, according to their peculiar dispositions, the revolutions they underwent, or the influence of personal character. England, more fortunate than the rest, had acquired in the fifteenth century a just reputation for the goodness of her laws and the security of her citizens from oppression.

This liberty had been the slow fruit of ages, still waiting a happier season for its perfect ripeness, but already giving proof of the vigour and industry which had been employed in its culture. I have endeavoured, in a work of which this may in a certain degree be reckoned a continuation, to trace the leading events and causes of its progress. It will be sufficient in this place briefly to point out the principal circumstances in the polity of England at the accession of Henry VII.

§ 2. The essential checks upon the royal authority were five in number.—1. The king could levy no sort of new tax upon his people, except by the grant of his parliament, consisting as well of bishops and mitred abbots or lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house. 2. The previous assent and authority of the same assembly were necessary for every new law, whether of a general or temporary nature. 3. No man could be committed to prison but by a legal warrant specifying his offence; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of regular sessions of gaol-delivery. 4. The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offence was alleged to have occurred, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision. 5. The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in an action for damages to be assessed by a jury, or, in a more extensive liability to criminal process; nor could they plead any warrant or countermand in their justification, not even the direct order of the king.

very oppressive, and on that account just abolished by an act of the late usurper Richard, was in effect a recognition of the general principle, which it sought to elude rather than transgress.

The necessary concurrence of the two houses of parliament in legislation, though it could not be more unequivocally established than the former, had in earlier times been more free from all attempt at encroachment. We know not of any laws that were ever enacted by our kings without the assent and advice of their great council; though it is justly doubted whether the representatives of the ordinary freeholders, or of the boroughs, had seats and suffrages in that assembly during seven or eight reigns after the conquest. They were then, however, ingrafted upon it with plenary legislative authority; and if the sanction of a statute were required for this fundamental axiom, we might refer to one in the 15th of Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed."¹

It may not be impertinent to remark in this place, that the opinion of such as have fancied the royal prerogative under the houses of Plantagenet and Tudor to have had no effectual or unquestioned limitations is decidedly refuted by the notorious fact that no alteration in the general laws of the realm was ever made, or attempted to be made, without the consent of parliament. It is not surprising that the council, in great exigency of money, should sometimes employ force to extort it from the merchants, or that servile lawyers should be found to vindicate these encroachments of power. Impositions, like other arbitrary measures, were particular and temporary, prompted by rapacity, and endured through compulsion. But if the kings of England had been supposed to enjoy an absolute authority, we should find some proofs of it in their exercise of the supreme function of sovereignty, the enactment of new laws. Yet there is not a single instance, from the first dawn of our constitutional history, where a proclamation, or order of council, has dictated any change, however trifling, in the code of private rights, or in the penalties of criminal offences. Was it ever pretended that the king could empower his subjects to devise their freeholds, or to levy fines of their entailed lands? Has even the slightest regulation, as to judicial procedure, or any permanent prohibition, even in fiscal law, been ever enforced without statute?

¹ Nothing can be more evident than that this statute not only establishes by a legislative declaration the present constitution

of parliament, but recognises it as already standing upon a custom of some length of time.

There was, indeed, a period, later than that of Henry VII., when a control over the subject's free right of doing all things not unlawful was usurped by means of proclamations. These, however, were always temporary, and did not affect to alter the established law. But though it would be difficult to assert that none of this kind had ever been issued in rude and irregular times, I have not observed any under the kings of the Plantagenet name which evidently transgress the boundaries of their legal prerogative.

The general privileges of the nation were far more secure than those of private men. Great violence was often used by the various officers of the crown, for which no adequate redress could be procured; the courts of justice were not strong enough, whatever might be their temper, to chastise such aggressions; juries, through intimidation or ignorance, returned such verdicts as were desired by the crown; and, in general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws.

justices of assize and gaol-delivery, being in general the judges of the courts at Westminster, should travel into each county, commonly twice a year, in order to try issues of fact, so called in distinction from issues of law, where the suitors, admitting all essential facts, disputed the rule applicable to them. By this device, which is as ancient as the reign of Henry II., the fundamental privilege of trial by jury, and the convenience of private suitors, as well as accused persons, were made consistent with an uniform jurisprudence; and though the reference of every legal question, however insignificant, to the courts above must have been inconvenient and expensive in a still greater degree than at present, it had, doubtless, a powerful tendency to knit together the different parts of England, to check the influence of feudality and clanship, to make the inhabitants of distant counties better acquainted with the capital city and more accustomed to the course of government, and to impair the spirit of provincial patriotism and animosity. The minor tribunals of each county, hundred, and manor, respectable for their antiquity and for their effect in preserving a sense of freedom and justice, had in a great measure, though not probably so much as in modern times, gone into disuse. In a few counties there still remained a palatine jurisdiction, exclusive of the king's courts; but in these the common rules of law and the mode of trial by jury were preserved. Justices of the peace, appointed out of the gentlemen of each county, inquired into criminal charges, committed offenders to prison, and tried them at their quarterly sessions, according to the same forms as the judges of gaol-delivery. The chartered towns had their separate jurisdiction under the municipal magistracy.

The laws against theft were severe, and capital punishments unsparingly inflicted. Yet they had little effect in repressing acts of violence, to which a rude and licentious state of manners, and very imperfect dispositions for preserving the public peace, naturally gave rise. These were frequently perpetrated or instigated by men of superior wealth and power, above the control of the mere officers of justice. Meanwhile the kingdom was increasing in opulence; the English merchants possessed a large share of the trade of the north; and a woollen manufacture, established in different parts of the kingdom, had not only enabled the legislature to restrain the import of cloths, but had begun to supply foreign nations. The population may probably be reckoned, without any material error, at somewhat above three millions, but by no means distributed in the same proportions as at present; the northern counties, especially Lancashire and Cumberland, being very ill peopled, and the inhabitants of London and Westminster not exceeding sixty or seventy thousand,

§ 5. Such was the political condition of England when Henry Tudor, the only living representative of the house of Lancaster, though incapable, by reason of the illegitimacy of the ancestor who connected him with it, of asserting a just right of inheritance, became master of the throne by the defeat and death of his competitor at Bosworth, and by the general submission of the kingdom. He assumed the royal title immediately after his victory, and summoned a parliament to recognize or sanction his possession. The circumstances were by no means such as to offer an auspicious presage for the future. A subdued party had risen from the ground, incensed by proscription and elated by success; the late battle had in effect been a contest between one usurper and another; and England had little better prospect than a renewal of that desperate and interminable contention which pretences of hereditary right have so often entailed upon nations.

A parliament called by a conqueror might be presumed to be itself conquered. Yet this assembly did not display so servile a temper, or so much of the Lancastrian spirit as might be expected. It was "ordained and enacted by the assent of the lords, and at the request of the commons, that the inheritance of the crowns of England and France, and all dominions appertaining to them, should remain in Henry VII. and the heirs of his body for ever, and in none other." Words studiously ambiguous, which, while they avoid the assertion of an hereditary right that the public voice repelled, were meant to create a parliamentary title, before which the pretensions of lineal descent were to give way. They seem to make Henry the stock of a new dynasty. But, lest the spectre of indefeasible right should stand once more in arms on the tomb of the house of York, the two houses of parliament showed an earnest desire for the king's marriage with the daughter of Edward IV., who, if she should bear only the name of royalty, might transmit an undisputed inheritance of its prerogatives to her posterity.

§ 6. This marriage, and the king's great vigilance in guarding his crown, caused his reign to pass with considerable reputation, though not without disturbance. He had to learn, by the extraordinary though transient success of two impostors, that his subjects were still strongly infected with the prejudice which had once overthrown the family he claimed to represent. Nor could those who served him be exempt from apprehensions of a change of dynasty, which might convert them into attainted rebels. The state of the nobles and gentry had been intolerable during the alternate proscriptions of Henry VI. and Edward IV. Such apprehensions led to a very important statute in the eleventh year of this king's reign, intended, as far as law could furnish a prospective security against the violence and vengeance of factions, to place the civil duty of

allegiance on a just and reasonable foundation, and indirectly to cut away the distinction between governments *de jure* and *de facto*. It enacts, after reciting that subjects by reason of their allegiance are bound to serve their prince for the time being against every rebellion and power raised against him, that "no person attending upon the king and sovereign lord of this land for the time being, and doing him true and faithful service, shall be convicted of high treason, by act of parliament or other process of law, nor suffer any forfeiture or punishment; but that every act made contrary to this statute should be void and of no effect."² The endeavour to bind future parliaments was of course nugatory; but the statute remains an unquestionable authority for the constitutional maxim that possession of the throne gives a sufficient title to the subject's allegiance, and justifies his resistance of those who may pretend to a better right. It was much resorted to in argument at the time of the revolution and in the subsequent period.

It has been usual to speak of this reign as if it formed a great epoch in our constitution; the king having by his politic measures broken the power of the barons who had hitherto withstood the prerogative, while the commons had not yet risen from the humble station which they were supposed to have occupied. I doubt, however, whether the change was quite so precisely referable to the time of Henry VII., and whether his policy has not been somewhat over-rated. In certain respects his reign is undoubtedly an era in our history. It began in revolution and a change in the line of descent. It nearly coincides, which is more material, with the commencement of what is termed modern history, as distinguished from the middle ages, and with the memorable events that have led us to make that leading distinction, especially the consolidation of the great European monarchies, among which England took a conspicuous station. But, relatively to the main subject of our inquiry, it is not evident that Henry VII. carried the authority of the crown much beyond the point at which Edward IV. had left it. The strength of the nobility had been grievously impaired by the bloodshed of the civil wars, and the attainders that followed them. From this cause, or from the general intimidation, we find, as I have observed in another work, that no laws favourable to public liberty, or remedial with respect to the aggressions of power, were enacted, or (so far as appears) even proposed in parliament, during the reign of Edward IV.; the first, since that of John, to which such a remark can be applied. The commons, who had not always been so humble and abject as smatterers in history are apt to fancy, were by this time much degenerated from the spirit they had displayed under Edward III. and Richard II. Thus the founder of the line

² Stat. 11 H. 7, c. 1.

of Tudor came, not certainly to an absolute, but a vigorous prerogative, which his cautious, dissembling temper and close attention to business were well calculated to extend.

The laws of Henry VII. have been highly praised by Lord Bacon as "deep and not vulgar, not made upon the spur of a particular occasion for the present, but out of providence for the future, to make the estate of his people still more and more happy, after the manner of the legislators in ancient and heroic times." But when we consider how very few kings or statesmen have displayed this prospective wisdom and benevolence in legislation, we may hesitate a little to bestow so rare a praise upon Henry. Like the laws of all other times, his statutes seem to have had no further aim than to remove some immediate mischief, or to promote some particular end. One, however, has been much celebrated as an instance of his sagacious policy and as the principal cause of exalting the royal authority upon the ruins of the aristocracy; I mean the statute of Fines (as one passed in the fourth year of his reign is commonly called), which is supposed to have given the power of alienating entailed lands.³

§ 7. The two first of the Tudors rarely experienced opposition but when they endeavoured to levy money. Taxation, in the eyes of their subjects, was so far from being no tyranny, that it seemed the only species worth a complaint. Henry VII. obtained from his first parliament a grant of tonnage and poundage during life, according to several precedents of former reigns. But when general subsidies were granted, the same people, who would have seen an innocent man led to prison or the scaffold with little attention, twice broke out into dangerous rebellions; and as these, however arising from such immediate discontent, were yet a good deal connected with the opinion of Henry's usurpation and the claims of a pretender, it was a necessary policy to avoid too frequent imposition of burdens upon the poorer classes of the community. He had recourse accordingly to the system of benevolences, or contributions apparently voluntary, though in fact extorted from his richer subjects. These, having become an intolerable grievance under Edward IV., were abolished in the only parliament of Richard III. with strong expressions of indignation. But in the seventh year of Henry's reign, when, after having with timid and parsimonious hesitation suffered the marriage of Anne of Brittany with Charles VIII., he was compelled by the national spirit to make a demonstration of war, he ventured to try this unfair and unconstitutional method of obtaining aid; which received afterwards too much of a parliamentary sanction by an act enforcing the payment of arrears of money which private men had thus been prevailed upon to

³ See Note at end of chapter, on the intention and effect of this Statute.

promise.⁴ The statute, indeed, of Richard is so expressed as not clearly to forbid the solicitation of voluntary gifts, which of course rendered it almost nugatory.

Archbishop Morton is famous for the dilemma which he proposed to merchants and others whom he solicited to contribute. He told those who lived handsomely that their opulence was manifest by their rate of expenditure. Those, again, whose course of living was less sumptuous, must have grown rich by their economy. Either class could well afford assistance to their sovereign. This piece of logic, unanswerable in the mouth of a privy councillor, acquired the name of Morton's fork. Henry doubtless reaped great profit from these indefinite exactions, miscalled benevolences. But, insatiate of accumulating treasure, he discovered other methods of extortion, still more odious, and possibly more lucrative. Many statutes had been enacted in preceding reigns, sometimes rashly or from temporary motives, sometimes in opposition to prevailing usages which they could not restrain, of which the pecuniary penalties, though exceedingly severe, were so little enforced as to have lost their terror. These his ministers raked out from oblivion; and, prosecuting such as could afford to endure the law's severity, filled his treasury with the dishonourable produce of amercements and forfeitures. The feudal rights became, as indeed they always had been, instrumental to oppression. The lands of those who died without heirs fell back to the crown by escheat. It was the duty of certain officers in every county to look after its rights. The king's title was to be found by the inquest of a jury, summoned at the instance of the escheator, and returned into the exchequer. It then became a matter of record, and could not be impeached. Hence the escheators taking hasty inquests, or sometimes falsely pretending them, defeated the right heir of his succession. Excessive fines were imposed on granting livery to the king's wards on their majority. Informations for intrusions, criminal indictments, outlawries on civil process, in short, the whole course of justice, furnished pretences for exacting money; while a host of dependents on the court, suborned to play their part as witnesses, or even as jurors, rendered it hardly possible for the most innocent to escape these penalties. Empson and Dudley are notorious as the prostitute instruments of Henry's avarice in the later and more unpopular years of his reign; but they dearly purchased a brief hour of favour by an ignominious death and perpetual infamy. The avarice of Henry VII., as it rendered his government unpopular, which had always been

⁴ Stat. 11 H. 7, c. 10. Bacon says the benevolence was granted by act of parliament, which Hume shows to be a mistake. The preamble of 11 H. 7 recites it

to have been "granted by divers of your subjects severally;" and contains a provision that no heir shall be charged on account of his ancestor's promise.

reunious, must be deemed a drawback from the wisdom ascribed to him; though by his good fortune it answered the end of invigorating his power. By these fines and forfeitures he impoverished and intimidated the nobility. The earl of Oxford compounded, by the payment of 15,000 pounds, for the penalties he had incurred by keeping retainers in livery; a practice mischievous and illegal, but too customary to have been punished before this reign. Even the king's clemency seems to have been influenced by the sordid motive of selling pardons; and it has been shown that he made a profit of every office in his court, and received money for conferring bishoprics.

It is asserted by early writers, though perhaps only on conjecture, that he left a sum, thus amassed, of no less than 1,800,000 pounds at his decease. This treasure was soon dissipated by his successor, who had recourse to the assistance of parliament in the very first year of his reign. The foreign policy of Henry VIII., far unlike that of his father, was ambitious and enterprising. No former king had involved himself so frequently in the labyrinth of continental alliances. They naturally drew the king into heavy expenses, and, together with his profusion and love of magnificence, rendered his government very burthensome. At his accession, however, the rapacity of his father's administration had excited such universal discontent, that it was found expedient to conciliate the nation. An act was passed in his first parliament to correct the abuses that had prevailed in finding the king's title to lands by escheat. The same parliament repealed the law of the late reign enabling justices of assize and of the peace to determine all offences, except treason and felony, against any statute in force, without a jury, upon information in the king's name. This serious innovation had evidently been prompted by the spirit of rapacity, which probably some honest juries had shown courage enough to withstand. It was a much less landable concession to the vindictive temper of an injured people, seldom unwilling to see bad methods employed in punishing bad men, that Empson and Dndley, who might perhaps by stretching the prerogative have incurred the penalties of a misdemeanor, were put to death on a frivolous charge of high treason.⁵

§ 8. The demands made by Henry VIII. on Parliament were considerable, both in frequency and amount. Notwithstanding the servility of those times, it sometimes attempted to make a stand against these inroads upon the public purse. Wolsey came into the house of commons in 1523, and asked for 800,000*l.*, to be raised by a tax of one-fifth upon lands and goods, in order to prosecute the war just commenced against France. Sir. Thomas More, then

⁵ They were convicted by a jury, and not executed for more than a year after afterwards attainted by parliament, but the king's accession.

speaker, is said to have urged the house to acquiesce. But the sum demanded was so much beyond any precedent that all the independent members opposed a vigorous resistance. The debates lasted fifteen or sixteen days. A considerable part of the commons appears to have consisted of the king's household officers, whose influence, with the utmost difficulty, obtained a grant much inferior to the cardinal's requisition, and payable by instalments in four years. But Wolsey, greatly dissatisfied with this imperfect obedience, compelled the people to pay up the whole subsidy at once.⁶

No parliament was assembled for nearly seven years after this time. Wolsey had already resorted to more arbitrary methods of raising money by loans and lenevolences.⁷ The year before this debate in the commons he borrowed twenty thousand pounds of the city of London; yet so insufficient did that appear for the king's exigencies, that within two months commissioners were appointed throughout the kingdom to swear every man to the value of his possessions, requiring a rateable part according to such declaration. Such unparalleled violations of the clearest and most important privilege that belonged to Englishmen excited a general apprehension. Fresh commissioners, however, were appointed in 1525, with instructions to demand the sixth part of every man's substance, payable in money, plate, or jewels, according to the last valuation. This demand Wolsey made in person to the mayor and chief citizens of London. They attempted to remonstrate, but were warned to beware, lest "it might fortune to cost some their heads." Some were sent to prison for hasty words, to which the smart of injury excited them. The clergy, from whom, according to usage, a larger measure of contribution was demanded, stood upon their privilege to grant their money only in convocation, and denied the right of a king of England to ask any man's money without authority of parliament. The rich and poor agreed in cursing the cardinal as the subverter of their laws and liberties; and said, "if men should give their goods by a commission, then it would be worse than the taxes of France, and England should be bond, and not free." Nor did their discontent terminate in complaints. The commissioners met with forcible opposition in several counties, and a serious insurrection broke out in Suffolk. So menacing a spirit overawed the proud

⁶ Roper's *Life of More*. Hall, 656, 672. This chronicler, who wrote under Edward VI., is our best witness for the events of Henry's reign.

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was granted by his first parliament, stat. 1 H. 8, c. 20, as will be found even in Ruffhead's table of contents, though not in the body of his volume; and the act is of course printed at length in the great edition of the statutes. That which probably by its title gave rise to the error 6 H. 8, c. 13, has a different object.

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tempers of Henry and his minister, who found it necessary not only to pardon all those concerned in these tumults, but to recede altogether upon some frivolous *prétex*ts from the illegal exaction, revoking the commissions, and remitting all sums demanded under them. They now resorted to the more specious request of a voluntary benevolence. This also the citizens of London endeavoured to repel, by alleging the statute of Richard III. But it was answered, that he was an usurper, whose acts did not oblige a lawful sovereign. It does not appear whether or not Wolsey was more successful in this new scheme; but, generally, rich individuals had no remedy but to compound with the government.

No very material attempt had been made since the reign of Edward III. to levy a general imposition without consent of parliament, and in the most remote and irregular times it would be difficult to find a precedent for so universal and enormous an exaction; since tallages, however arbitrary, were never paid by the barons or freeholders, nor by their tenants; and the aids to which they were liable were restricted to particular cases. If Wolsey, therefore, could have procured the acquiescence of the nation under this yoke, there would probably have been an end of parliaments for all ordinary purposes, though, like the states general of France, they might still be convoked to give weight and security to great innovations. But the courage and love of freedom natural to the English commons, speaking in the hoarse voice of tumult, though very ill supported by their superiors, preserved us in so great a peril.

§ 9. If we justly regard with detestation the memory of those ministers who have aimed at subverting the liberties of their country, we shall scarcely approve the partiality of some modern historians towards cardinal Wolsey; a partiality, too, that contradicts the general opinion of his contemporaries. Haughty beyond comparison, negligent of the duties and decorums of his station, profuse as well as rapacious, obnoxious alike to his own order and to the laity, his fall had long been secretly desired by the nation, and contrived by his adversaries. His generosity and magnificence seem rather to have dazzled succeeding ages than his own. But, in fact, his best apology is the disposition of his master. The latter years of Henry's reign were far more tyrannical than those during which he listened to the counsels of Wolsey; and though this was principally owing to the peculiar circumstances of the latter period, it is but equitable to allow some praise to a minister for the mischief which he may be presumed to have averted. Had a nobler spirit animated the parliament which met at the era of Wolsey's fall, it might have prompted his impeachment for gross violations of liberty. But these were not the offences that had forfeited his prince's favour, or that they dared bring to justice. They were not

absent, perhaps, from the recollection of some of those who took a part in prosecuting the fallen minister. I can discover no better apology for Sir Thomas More's participation in impeaching Wolsey on articles so frivolous that they have served to redeem his fame with later times, than his knowledge of weightier offences against the common weal which could not be alleged, and especially the commissions of 1525.⁸ But in truth this parliament showed little outward disposition to object any injustice of such a kind to the cardinal. They professed to take upon themselves to give a sanction to his proceedings, as if in mockery of their own and their country's liberties. They passed a statute, the most extraordinary, perhaps, of those strange times, wherein—

“They do, for themselves and all the whole body of the realm which they represent, freely, liberally, and absolutely, give and grant unto the king's highness, by authority of this present parliament, all and every sum and sums of money which to them and every of them is, ought, or might be due, by reason of any money, or any other thing, to his grace at any time heretofore advanced or paid by way of trust or loan, either upon any letter or letters under the king's privy seal, general or particular, letter missive, promise, bond, or obligation of re-payment, or by any taxation or other assessing, by virtue of any commission or commissions, or by any other mean or means, whatever it be, heretofore passed for that purpose.”⁹

This extreme servility and breach of trust naturally excited loud murmurs; for the debts thus released had been assigned over by many to their own creditors, and, having all the security both of the king's honour and legal obligation, were reckoned as valid as any other property. It is said by Hall that most of this house of commons held offices under the crown. This illaudable precedent was remembered in 1544, when a similar act passed, releasing to the king all moneys borrowed by him since 1542, with the additional provision, that if he should have already discharged any of these debts, the party or his heirs should repay his majesty.

§ 10. Henry had once more recourse, about 1545, to a general exaction, miscalled benevolence. The council's instructions to the commissioners employed in levying it leave no doubt as to its compulsory character. They were directed to incite all men to a loving contribution according to the rates of their substance, as they were

⁸ The word impeachment is not very accurately applicable to these proceedings against Wolsey; since the articles were first presented to the upper house, and sent down to the commons, where Cromwell so ably defended his fallen master that nothing was done upon them. “Upon this honest beginning,” says lord Herbert, “Cromwell obtained his first reputation.”

I am disposed to conjecture, from Cromwell's character and that of the house of commons, as well as from some passages of Henry's subsequent behaviour towards the cardinal, that it was not the king's intention to follow up this prosecution, at least for the present.

⁹ Rot. Parl. vi. 164. Burnet, Appendix, No. 31.

assessed at the last subsidy, calling on no one whose lands were of less value than 40s. or whose chattels were less than 15*l*. It is intimated that the least which his majesty could reasonably accept would be twenty pence in the pound on the yearly value of land, and half that sum on moveable goods. They are to summon but a few to attend at one time, and to commune with every one apart, "less some one unreasonable man, amongst so many, forgetting his duty towards God, his sovereign lord, and his country, may go about by his malicious frowardness to silence all the rest, be they never so well disposed." They were to use "good words and amiable behaviour," to induce men to contribute, and to dismiss the obedient with thanks. But if any person should withstand their gentle solicitations, alleging either poverty or some other pretence which the commissioners should deem unfit to be allowed, then, after failure of persuasions and reproaches for ingratitude, they were to command his attendance before the privy council, at such time as they should appoint, to whom they were to certify his behaviour, enjoining him silence in the mean time, that his evil example might not corrupt the better disposed.¹⁰

It is only through the accidental publication of some family papers that we have become acquainted with this document, so curiously illustrative of the government of Henry VIII. From the same authority may be exhibited a particular specimen of the consequences that awaited the refusal of this benevolence. One Richard Reed, an alderman of London, had stood alone, as is said, among his fellow-citizens, in refusing to contribute. It was deemed expedient not to overlook this disobedience; and the course adopted in punishing it is somewhat remarkable. The English army was then in the field on the Scots border. Reed was sent down to serve as a soldier at his own charge; and the general, sir Ralph Ewer, received intimations to employ him on the hardest and most perilous duty, and subject him, when in garrison, to the greatest privations, that he might feel the smart of his folly and sturdy disobedience. "Finally," the letter concludes, "you must use him in all things according to the sharpe discipline militar of the northern wars."¹¹ It is natural to presume that few would expose themselves to the treatment of this unfortunate citizen; and that the commissioners

¹⁰ Lodge's Illustrations of British History, i. 711. Strype's Eccles. Memorials, Appendix, n. 119. The sums raised from different counties for this benevolence afford a sort of criterion of their relative opulence. Somerset gave 680*l*.; Kent, 617*l*.; Suffolk, 4512*l*.; Norfolk, 4046*l*.; Devon, 4527*l*.; Essex, 5051*l*.; but Lancashire only 60*l*, and Cumberland 57*l*.

The whole produced 119,531*l*. 7*s*. 6*d*., besides arrears.

¹¹ Lodge, p. 80. Lord Herbert mentions this story, and observes, that Reed having been taken by the Scots, was compelled to pay much more for his ransom than the benevolence required of him.

whom we find appointed two years afterwards in every county, to obtain from the king's subjects as much as they would willingly give, if they did not always find perfect readiness, had not to complain of many peremptory denials.

§ 11. Such was the security that remained against arbitrary taxation under the two Henries. Were men's lives better protected from unjust measures, and less at the mercy of a jealous court? It cannot be necessary to expatiate very much on this subject in a work that supposes the reader's acquaintance with the common facts of our history; yet it would leave the picture too imperfect, were I not to recapitulate the more striking instances of sanguinary injustice, that have cast so deep a shade over the memory of these princes.

The duke of Clarence, attainted in the reign of his brother Edward IV., left one son, whom his uncle restored to the title of earl of Warwick. This boy, at the accession of Henry VII., being then about twelve years old, was shut up in the Tower. Fifteen years of captivity had elapsed, when, if we trust to the common story, having unfortunately become acquainted with his fellow-prisoner Perkin Warbeck, he listened to a scheme for their escape, and would probably not have been averse to second the ambitious views of that young man. But it was surmised, with as much likelihood as the character of both parties could give it, that the king had promised Ferdinand of Aragon to remove the earl of Warwick out of the way, as the condition of his daughter's marriage with the prince of Wales, and the best means of securing their inheritance. Warwick accordingly was brought to trial for a conspiracy to overturn the government; which he was induced to confess, in the hope, as we must conceive, and perhaps with an assurance, of pardon, and was immediately executed.

The nearest heir to the house of York, after the queen and her children and the descendants of the duke of Clarence, was a son of Edward IV.'s sister, the earl of Suffolk, whose elder brother, the earl of Lincoln, had joined in the rebellion of Lambert Simnel, and perished at the battle of Stoke. Suffolk, having killed a man in an affray, obtained a pardon, which the king compelled him to plead in open court at his arraignment. This laudable impartiality is said to have given him offence, and provoked his flight into the Netherlands; whence, being a man of a turbulent disposition, and partaking in the hatred of his family towards the house of Lancaster, he engaged in a conspiracy with some persons at home, which caused him to be attainted of treason. Some time afterwards, the arch-duke Philip, having been shipwrecked on the coast of England, found himself in a sort of honourable detention at Henry's court. On consenting to his departure, the king requested him to send over

such a violation of natural justice, was himself its earliest example. In the apparent zenith of favour this able and faithful minister, the king's vicegerent in his ecclesiastical supremacy, and recently created earl of Essex, fell so suddenly, and so totally without offence, that it has perplexed some writers to assign the cause. But there seems little doubt that Henry's dissatisfaction with his fourth wife, Anne of Cleves, whom Cromwell had recommended, alienated his selfish temper, and inclined his ear to the whisperings of those courtiers who abhorred the favourite and his measures. An act attainting him of treason and heresy was hurried through parliament, without hearing him in his defence. This precedent of sentencing men unheard, by means of an act of attainder, was followed in the case of Dr. Barnes, burned not long afterwards for heresy.

§ 14. The duke of Norfolk had been throughout Henry's reign one of his most confidential ministers. But as the king approached his end, an inordinate jealousy of great men rather than mere caprice appears to have prompted the resolution of destroying the most conspicuous family in England. Norfolk's son, too, the earl of Surrey, though long a favourite with the king, possessed more talents and renown, as well as a more haughty spirit, than were compatible with his safety. A strong party at court had always been hostile to the duke of Norfolk; and his ruin was attributed especially to the influence of the two Seymours. No accusations could be more futile than those which sufficed to take away the life of the noblest and most accomplished man in England. Surrey's treason seems to have consisted chiefly in quartering the royal arms in his escutcheon; and this false heraldry, if such it were, must have been considered as evidence of meditating the king's death. His father ignominiously confessed the charges against himself, in a vain hope of mercy from one who knew not what it meant. An act of attainder (for both houses of parliament were commonly made accessory to the legal murders of this reign) was passed with much haste, and perhaps irregularity; but Henry's demise ensuing at the instant prevented the execution of Norfolk. Continuing in prison during Edward's reign, he just survived to be released and restored in blood under Mary.

§ 15. Among the victims of this monarch's ferocity, as we bestow most of our admiration on Thomas More, so we reserve our greatest pity for Anne Boleyn, who, we have in any age hesitated to admit, was by no means sufficient to her, which she had ascended could approve. He per- ceive that he did not referred to another

worse than her trial. She was indicted, partly upon the statute of Edward III., which, by a just though rather technical construction, has been held to extend the guilt of treason to an adulterous queen as well as to her paramour, and partly on the recent law for preservation of the succession, which attached the same penalties to anything done or said in slander of the king's issue. Her levities in discourse were brought within this strange act by a still more strange interpretation. Nor was the wounded pride of the king content with her death. Under the fear, as is most likely, of a more cruel punishment, which the law affixed to her offence, Anne was induced to confess a pre-contract with Lord Percy, on which her marriage with the king was annulled by an ecclesiastical sentence, without awaiting its certain dissolution by the axe. Catherine Howard had indulged in licentious habits before her marriage, but her post-nuptial guilt is very questionable, which makes her execution, and that of others who suffered with her, another of Henry's murders. It was after the execution of this fifth wife that the celebrated law was enacted, whereby any woman whom the king should marry as a virgin incurred the penalties of treason if she did not previously reveal any failings that had disqualified her for the service of Diana.

§ 16. Henry's two divorces had created an uncertainty as to the line of succession, which parliament endeavoured to remove, not by such constitutional provisions in concurrence with the crown as might define the course of inheritance, but by enabling the king, on failure of issue by Jane Seymour, or any other lawful wife, to make over and bequeath the kingdom to any persons at his pleasure, not even reserving a preference to the descendants of former sovereigns. By a subsequent statute, the princesses Mary and Elizabeth were nominated in the entail, after the king's male issue, subject, however, to such conditions as he should declare, by non-compliance with which their right was to cease. This act still left it in his power to limit the remainder at his discretion. In execution of this authority, he devised the crown, upon failure of issue from his three children, to the heirs of the body of Mary duchess of Suffolk, the younger of his two sisters; postponing at least, if not excluding, the royal family of Scotland, descended from his elder sister Margaret. In surrendering the regular laws of the monarchy to one man's caprice, this parliament became accessory, so far as in it lay, to dispositions which might eventually have kindled the flames of civil war. But it seemed to aim at inflicting a still deeper injury on future generations, in enacting that a king, after he should have attained the age of twenty-four years, might repeal any statutes made since his accession. Such a provision not only tended to annihilate the authority of a regency, and to expose the kingdom to a sort of

anarchical confusion during its continuance, but seemed to prepare the way for a more absolute power of abrogating all acts of the legislature. Three years afterwards it was enacted that proclamations made by the king and council, under penalty of fine and imprisonment, should have the force of statutes, so that they should not be prejudicial to any person's inheritance, offices, liberties, goods, and chattels, or infringe the established laws. This has been often noticed as an instance of servile compliance. It is, however, a striking testimony to the free constitution it infringed, and demonstrates that the prerogative could not soar to the heights it aimed at, till thus impeded by the perfidious hand of parliament. It is also to be observed, that the power given to the king's proclamations is considerably limited.

§ 17. A government administered with so frequent violations not only of the chartered privileges of Englishmen, but of those still more sacred rights which natural law has established, must have been regarded, one would imagine, with just abhorrence, and earnest longings for a change. Yet contemporary authorities by no means answer to this expectation. Some mention Henry after his death in language of eulogy; and, if we except those whom attachment to the ancient religion had inspired with hatred towards his memory, very few appear to have been aware that his name would descend to posterity among those of the many tyrants and oppressors of innocence, whom the wrath of Heaven has raised up, and the servility of men has endured. I do not indeed believe that he had really conciliated his people's affection. That perfect fear which attended him must have cast out love. But he had a few qualities that deserve esteem, and several which a nation is pleased to behold in a sovereign. He wanted, or at least did not manifest in any eminent degree, one usual vice of tyrants, dissimulation: his manners were affable, and his temper generous. Though his schemes of foreign policy were not very sagacious, and his wars, either with France or Scotland, productive of no material advantage, they were uniformly successful, and retrieved the honour of the English name. But the main cause of the reverence with which our forefathers cherished this king's memory was the share he had taken in the Reformation. They saw in him, not indeed the proselyte of their faith, but the subverter of their enemies' power, the avenging minister of Heaven, by whose giant arm the chain of superstition had been broken, and the prison gates burst asunder.

§ 18. The ill-assorted body of counsellors who exercised the functions of regency by Henry's testament were sensible that they had not sinews to wield his iron sceptre, and that some sacrifice must be made to a nation exasperated as well as overawed by the

violent measures of his reign. In the first session, accordingly, of Edward's parliament, the new treasons and felonies which had been created to please his father's sanguinary disposition were at once abrogated.

The statute of Edward III. became again the standard of high treason, except that the denial of the king's supremacy was still liable to its penalties. The same act, which relieves the subject from these terrors, contains also a repeal of that which had given legislative validity to the king's proclamations. These provisions appear like an elastic recoil of the constitution after the extraordinary pressure of that despotic reign. But however they may indicate the temper of parliament, we must consider them but as an unwilling and insincere compliance on the part of the government. Henry, too arrogant to dissemble with his subjects, had stamped the law itself with the print of his despotism. The more wily courtiers of Edward's council deemed it less obnoxious to violate than to new-mould the constitution. For, although proclamations had no longer the legal character of statutes, we find several during Edward's reign enforced by penalty of fine and imprisonment. Many of the ecclesiastical changes were first established by no other authority, though afterwards sanctioned by parliament.

It soon became evident that if the new administration had not fully imbibed the sanguinary spirit of their late master, they were as little scrupulous in bending the rules of law and justice to their purpose in cases of treason. The duke of Somerset, nominated by Henry as one only of his sixteen executors, obtained almost immediately afterwards a patent from the young king, constituting him sole regent under the name of protector, with the assistance, indeed, of the rest as his counsellors, but with the power of adding any others to their number. Conscious of his own usurpation, it was natural for Somerset to dread the aspiring views of others; nor was it long before he discovered a rival in his brother, lord Seymour, of Sudeley, whom, according to the policy of that age, he thought it necessary to destroy by a bill of attainder. Seymour was apparently a dangerous and unprincipled man; he had courted the favour of the young king by small presents of money, and appears beyond question to have entertained a hope of marrying the princess Elizabeth, who had lived much in his house during his short union with the queen dowager. It was surmised that this lady had been poisoned to make room for a still nobler consort. But in this there could be no treason; and it is not likely that any evidence was given which could have brought him within the statute of Edward III. In this prosecution against lord Seymour it was thought expedient to follow the very worst of Henry's precedents, by not hearing the accused in his defence. The bill passed through the upper house,

the natural guardian of a peer's life and honour, without one dissenting voice.

But it was more easy to crush a single competitor than to keep in subjection the subtle and daring spirits trained in Henry's councils, and jealous of the usurpation of an equal. The protector, attributing his success, as is usual with men in power, rather to skill than fortune, and confident in the two frailest supports that a minister can have, the favour of a child and of the lower people, was stripped of his authority within a few months after the execution of lord Seymour, by a confederacy which he had neither the discretion to prevent nor the firmness to resist. Though from this time but a secondary character upon the public stage, he was so near the throne as to keep alive the suspicions of the duke of Northumberland, who, with no ostensible title, had become not less absolute than himself. It is not improbable that Somerset was innocent of the charge imputed to him, namely, a conspiracy to murder some of the privy councillors, which had been erected into felony by a recent statute; but the evidence, though it may have been false, does not seem legally insufficient. He demanded on his trial to be confronted with the witnesses, a favour rarely granted in that age to state criminals, and which he could not very decently solicit after causing his brother to be condemned unheard. Three lords, against whom he was charged to have conspired, sat upon his trial; and it was thought a sufficient reply to his complaints of this breach of a known principle that no challenge could be allowed in the case of a peer.

From this designing and unscrupulous oligarchy no measure conducive to liberty and justice could be expected to spring. But among the commons there must have been men, although their names have not descended to us, who, animated by a purer zeal for these objects, perceived on how precarious a thread the life of every man was suspended, when the private deposition of one suborned witness, unconfronted with the prisoner, could suffice to obtain a conviction in cases of treason. In the worst period of Edward's reign we find inserted in a bill creating some new treasons one of the most important constitutional provisions which the annals of the Tudor family afford. It is enacted that "no person shall be indicted for any manner of treason except on the testimony of two lawful witnesses, who shall be brought in person before the accused at the time of his trial, to avow and maintain what they have to say against him, unless he shall willingly confess the charges."¹⁴ This salutary provision was strengthened, not taken away, as some later judges ventured to assert, by an act in the reign of Mary. In

a subsequent part of this work I shall find an opportunity for discussing this important branch of constitutional law.

§ 19. It seems hardly necessary to mention the momentary usurpation of lady Jane Grey, founded on no pretext of title which could be sustained by any argument. The reign that immediately followed is chiefly remembered as a period of sanguinary persecution; but though I reserve for the next chapter all mention of ecclesiastical disputes, some of Mary's proceedings in re-establishing popery belong to the civil history of our constitution. Impatient under the existence, for a moment, of rights and usages which she abhorred, this bigoted woman anticipated the legal authority which her parliament was ready to interpose for their abrogation; the Latin liturgy was restored, the married clergy expelled from their livings, and even many protestant ministers thrown into prison for no other crime than their religion, before any change had been made in the established laws. The queen, in fact, and those around her, acted and felt as a legitimate government restored after an usurpation, and treated the recent statutes as null and invalid. But even in matters of temporal government the stretches of prerogative were more violent and alarming than during her brother's reign. It is due, indeed, to the memory of one who has left so odious a name, to remark that Mary was conscientiously averse to encroach upon what she understood to be the privileges of her people. A wretched book having been written to exalt her prerogative, on the ridiculous pretence that, as a queen, she was not bound by the laws of former kings, she showed it to Gardiner, and on his expressing indignation at the sophism, threw it herself into the fire. An act passed, however, to settle such questions, which declares the queen to have all the lawful prerogatives of the crown. But she was surrounded by wicked councillors, renegades of every faith, and ministers of every tyranny. We must, in candour, attribute to their advice her arbitrary measures, though not her persecution of heresy, which she counted for virtue. She is said to have extorted loans from the citizens of London, and others of her subjects. This, indeed, was not more than had been usual with her predecessors. But we find one clear instance during her reign of a duty upon foreign cloth, imposed without assent of parliament; an encroachment unprecedented since the reign of Richard II. Several proofs might be adduced from records of arbitrary inquests for offences and illegal modes of punishment. The torture is, perhaps, more frequently mentioned in her short reign than in all former ages of our history put together, and, probably from that imitation of foreign governments, which contributed not a little to deface our constitution in the sixteenth century, seems deliberately to have been introduced as part of the process in those dark and uncon-

trolled tribunals which investigated offences against the state. A commission issued in 1557, authorising the persons named in it to inquire, by any means they could devise, into charges of heresy or other religious offences, and in some instances to punish the guilty, in others of a graver nature to remit them to their ordinaries, seems (as Burnet has well observed) to have been meant as a preliminary step to bringing in the inquisition. It was at least the germ of the high-commission court in the next reign. One proclamation in the last year of her inauspicious administration may be deemed a flight of tyranny beyond her father's example, which, after denouncing the importation of books filled with heresy and treason from beyond sea, proceeds to declare that whoever should be found to have such books in his possession should be reputed and taken for a rebel, and executed according to martial law. This had been provoked as well by a violent libel written at Geneva by Goodman, a refugee, exciting the people to dethrone the queen, as by the recent attempt of one Stafford, a descendant of the house of Buckingham, who, having landed with a small force at Scarborough, had vainly hoped that the general disaffection would enable him to overthrow her government.

§ 20. Notwithstanding, however, this apparently uncontrolled career of power, it is certain that the children of Henry VIII. did not preserve his almost absolute dominion over parliament. I have only met with one instance in his reign where the commons refused to pass a bill recommended by the crown. This was in 1532; but so unquestionable were the legislative rights of parliament, that, although much displeased, even Henry was forced to yield. We find several instances during the reign of Edward, and still more in that of Mary, where the commons rejected bills sent down from the upper house; and though there was always a majority of peers for the government, yet the dissent of no small number is frequently recorded in the former reign. Thus the commons not only threw out a bill creating several new treasons, and substituted one of a more moderate nature, with that memorable clause for two witnesses to be produced in open court, which I have already mentioned; but rejected one attainting Tunstall, bishop of Durham, for misprision of treason, and were hardly brought to grant a subsidy. Their conduct in the two former instances, and probably in the third, must be attributed to the indignation that was generally felt at the usurped power of Northumberland, and the untimely fate of Somerset. Several cases of similar unwillingness to go along with court measures occurred under Mary. She dissolved, in fact, her two first parliaments on this account. But the third was far from obsequious, and rejected several of her favourite bills. Two reasons principally contributed to this opposition: the one, a fear of entailing upon the

country those numerous exactions of which so many generations had complained, by reviving the papal supremacy, and more especially of a restoration of abbey lands; the other, an extreme repugnance to the queen's Spanish connection. If Mary could have obtained the consent of parliament, she would have settled the crown on her husband, and sent her sister, perhaps, to the scaffold.

§ 21. There cannot be a stronger proof of the increased weight of the commons during these reigns than the anxiety of the court to obtain favourable elections. Many ancient boroughs, undoubtedly, have at no period possessed sufficient importance to deserve the elective franchise on the score of their riches or population; and it is most likely that some temporary interest or partiality, which cannot now be traced, first caused a writ to be addressed to them. But there is much reason to conclude that the councillors of Edward VI., in erecting new boroughs, acted upon a deliberate plan of strengthening their influence among the commons. Twenty-two boroughs were created or restored in this short reign; some of them, indeed, places of much consideration; but not less than seven in Cornwall, and several others that appear to have been insignificant. Mary added fourteen to the number; and as the same course was pursued under Elizabeth, we in fact owe a great part of that irregularity in our popular representation, the advantages or evils of which we need not here discuss, less to changes wrought by time, than to deliberate and not very constitutional policy. Nor did the government scruple at direct and avowed interference with elections. A circular letter of Edward to all the sheriffs commands them to give notice to the freeholders, citizens, and burgesses, within their respective counties, "that our pleasure and commandment is, that they shall choose and appoint, as nigh as they possibly may, men of knowledge and experience within the counties, cities, and boroughs;" but nevertheless, that where the privy council should "recommend men of learning and wisdom, in such case their directions be regarded and followed." Several persons accordingly were recommended by letters to the sheriffs, and elected as knights for different shires; all of whom belonged to the court, or were in places of trust about the king. It appears probable that persons in office formed at all times a very considerable portion of the house of commons. Another circular of Mary before the parliament of 1554, directing the sheriffs to admonish the electors to choose good catholics and "inhabitants, as the old laws require," is much less unconstitutional; but the earl of Sussex, one of her most active councillors, wrote to the gentlemen of Norfolk, and to the burgesses of Yarmouth, requesting them to reserve their voices for the person he should name.

§ 22. It appears to be a very natural inquiry, after beholding the

course of administration under the Tudor line, by what means a government so violent in itself, and so plainly inconsistent with the acknowledged laws, could be maintained; and what had become of that English spirit which had not only controlled such injudicious princes as John and Richard II., but withstood the first and third Edward in the fulness of their pride and glory. There had evidently been a retrograde tendency towards absolute monarchy between the reigns of Henry VI. and Henry VIII. Nor could this be attributed to the common engine of despotism, a military force. For, except the yeomen of the guard, fifty in number, and the common servants of the king's household, there was not, in time of peace, an armed man receiving pay throughout England. A government that ruled by intimidation was absolutely destitute of force to intimidate. Hence risings of the mere commonalty were sometimes highly dangerous, and lasted much longer than ordinary. A rabble of Cornishmen, in the reign of Henry VII., headed by a blacksmith, marched up from their own county to the suburbs of London without resistance. The insurrections of 1525 in consequence of Wolsey's illegal taxation, those of the north ten years afterwards, wherein, indeed, some men of higher quality were engaged, and those which broke out simultaneously in several counties under Edward VI., excited a well-grounded alarm in the country, and in the two latter instances were not quelled without much time and exertion. The reproach of servility and patient acquiescence under usurped power falls not on the English people, but on its natural leaders. We have seen, indeed, that the house of commons now and then gave signs of an independent spirit, and occasioned more trouble, even to Henry VIII., than his compliant nobility. They yielded to every mandate of his imperious will; they bent with every breath of his capricious humour; they are responsible for the illegal trial, for the iniquitous attainder, for the sanguinary statute, for the tyranny which they sanctioned by law, and for that which they permitted to subsist without law. Nor was this selfish and pusillanimous subserviency more characteristic of the minions of Henry's favour, the Cromwells, the Riches, the Pagets, the Russells, and the Powletts, than of the representatives of ancient and honourable houses, the Howards, the Fitz-Allans, and the Talbots. We trace the noble statesmen of those reigns concurring in all the inconsistencies of their revolutions, supporting all the religions of Henry, Edward, Mary, and Elizabeth; adjudging the death of Somerset to gratify Northumberland, and of Northumberland to redeem their participation in his fault, setting up the usurpation of lady Jane, and abandoning her on the first doubt of success, constant only in the rapacious acquisition of estates and honours, from whatever source, and in adherence to the present power.

§ 23. I have noticed in a former work that illegal and arbitrary jurisdiction exercised by the council, which, in despite of several positive statutes, continued in a greater or less degree, through all the period of the Plantagenet family, to deprive the subject, in many criminal charges, of that sacred privilege, trial by his peers. This usurped jurisdiction, carried much further, and exercised more vigorously, was the principal grievance under the Tudors; and the forced submission of our forefathers was chiefly owing to the terrors of a tribunal which left them secure from no infliction but public execution, or actual dispossession of their freeholds. And, though it was beyond its direct province to pass sentence on capital charges, yet, by intimidating jurors, it procured convictions which it was not authorised to pronounce. We are naturally astonished at the easiness with which verdicts were sometimes given against persons accused of treason, on evidence insufficient to support the charge in point of law, or in its nature not competent to be received, or unworthy of belief. But this is explained by the peril that hung over the jury in case of acquittal.

"If," says Sir Thomas Smith, in his *Treatise on the Commonwealth of England*, "they do pronounce not guilty upon the prisoner, against whom manifest witness is brought in, the prisoner escapeth, but the twelve are not only rebuked by the judges, but also threatened of punishment, and many times commanded to appear in the star-chamber, or before the privy council, for the matter. But this threatening chanceth oftener than the execution thereof; and the twelve answer with most gentle words, they did it according to their consciences, and pray the judges to be good unto them; they did as they thought right, and as they accorded all; and so it passeth away for the most part. Yet I have seen in my time, but not in the reign of the king now [Elizabeth], that an inquest, for pronouncing one not guilty of treason contrary to such evidence as was brought in, were not only imprisoned for a space, but a large fine set upon their heads, which they were fain to pay; another inquest, for acquitting another, beside paying a fine, were put to open ignominy and shame. But these doings were even then accounted of many for violent, tyrannical, and contrary to the liberty and custom of the realm of England."¹⁵

One of the instances to which he alludes was probably that of the jury who acquitted Sir Nicholas Throckmorton in the second year of Mary. He had conducted his own defence with singular boldness and dexterity. On delivering their verdict, the court committed them to prison. Four, having acknowledged their offence, were soon released; but the rest, attempting to justify themselves before

¹⁵ Commonwealth of England, book 3, c. 1. The statute 26 H. 8, c. 4, enacts that if a jury in Wales acquit a felon, contrary to good and pregnant evidence, or otherwise misbehave themselves, the judge may

bind them to appear before the president and council of the Welsh marches. The partiality of Welsh jurors was notorious in that age; and the reproach has not quite ceased.

by words as by *fleeing* [confinement in the Fleet prison] a while, and thereby their pride and courage somewhat assuaged, they began to range themselves in order, and to understand that they had a prince who would rule his subjects by his law and obedience. Since that time, this court has been in more estimation, and is continued to this day in manner as I have said before."¹⁷

But, as the court erected by the statute of Henry VII. appears to have been in activity as late as the fall of cardinal Wolsey, and exercised its jurisdiction over precisely that class of offences which Smith here describes, it may perhaps be more likely that it did not wholly merge in the general body of the council till the minority of Edward, when that oligarchy became almost independent and supreme.

In this half-barbarous state of manners we certainly discover an apology, as well as motive, for the council's interference; for it is rather a servile worshipping of names than a rational love of liberty to prefer the forms of trial to the attainment of justice, or to fancy that verdicts obtained by violence or corruption are at all less iniquitous than the violent or corrupt sentences of a court. But there were many cases wherein neither the necessity of circumstances nor the legal sanction of any statute could excuse the jurisdiction habitually exercised by the court of star-chamber. Lord Bacon takes occasion from the act of Henry VII. to descant on the sage and noble institution, as he terms it, of that court whose walls had been so often witnesses to the degradation of his own mind. It took cognizance principally, he tells us, of four kinds of causes, "forces, frauds, crimes, various of stellation, and the inchoations or middle acts towards crimes, capital or heinous, not actually committed or perpetrated."¹⁸ Sir Thomas Smith uses expressions less indefinite than these last; and specifies scandalous reports of persons in power, and seditious news, as offences which they were accustomed to punish. We shall find abundant proofs of this department of their functions in the succeeding reigns. But this was in violation of many ancient laws, and not in the least supported by that of Henry VII.¹⁹

§ 25. A tribunal so vigilant and severe as that of the star-chamber, proceeding by modes of interrogatory unknown to the

¹⁷ Commonwealth of England, book 3, c. 4.

¹⁸ Hist. of Henry VII. in Bacon's Works, II. p. 290.

¹⁹ The result of what has been said in the last pages may be summed up in a few propositions. 1. The court erected by the statute of 3 Henry VII. was not the court of star-chamber. 2. This court by the statute subsisted in full force till beyond

the middle of Henry VIII.'s reign, but not long afterwards went into disuse. 3. The court of star-chamber was the old *concilium ordinarium*, against whose jurisdiction many statutes had been enacted from the time of Edward III. 4. No part of the jurisdiction exercised by the star-chamber could be maintained on the authority of the statute of Henry VII.

common law, and possessing a discretionary power of fine and imprisonment, was easily able to quell any private opposition or contumacy. We have seen how the council dealt with those who refused to lend money by way of benevolence, and with the juries who found verdicts that they disapproved. Those that did not yield obedience to their proclamations were not likely to fare better. I know not whether menaces were used towards members of the commons who took part against the crown; but it would not be unreasonable to believe it, or at least that a man of moderate courage would scarcely care to expose himself to the resentment which the council might indulge after a dissolution.

In the persevering struggles of earlier parliaments against Edward III., Richard II., and Henry IV., it is a very probable conjecture that many considerable peers acted in union with, and encouraged the efforts of, the commons. But in the period now before us the nobility were precisely the class most deficient in that constitutional spirit which was far from being extinct in those below them. They knew what havoc had been made among their fathers by multiplied attainders during the rivalry of the two roses. They had seen terrible examples of the danger of giving umbrage to a jealous court, in the fate of lord Stanley and the duke of Buckingham, both condemned on slight evidence of treacherous friends and servants, from whom no man could be secure. Though rigour and cruelty tend frequently to overturn the government of feeble princes, it is unfortunately too true that, steadily employed and combined with vigilance and courage, they are often the safest policy of despotism. A single suspicion in the dark bosom of Henry VII., a single cloud of wayward humour in his son, would have been sufficient to send the proudest peer of England to the dungeon and the scaffold. Thus a life of eminent services in the field, and of unceasing compliance in council, could not rescue the duke of Norfolk from the effects of a dislike which we cannot even explain. Nor were the nobles of this age more held in subjection by terror than by the still baser influence of gain. Our law of forfeiture was well devised to stimulate as well as to deter; and Henry VIII., better pleased to slaughter the prey than to gorge himself with the carcass, distributed the spoils it brought him among those who had helped in the chase. The dissolution of monasteries opened a more abundant source of immiseration; every courtier, every peer, looked for an increase of wealth from grants of ecclesiastical estates, and naturally thought that the king's favour would most readily be gained by an implicit conformity to his will. Nothing, however, seems more to have sustained the arbitrary rule of Henry VIII. than the jealousy of the two religious parties formed in his time, and who, for all the latter years of his life, were main-

taining a doubtful and emulous contest for his favour. But this religious contest, and the ultimate establishment of the Reformation, are events far too important, even in a constitutional history, to be treated in a cursory manner; and as, in order to avoid transitions, I have purposely kept them out of sight in the present chapter, they will form the proper subject of the next.

NOTE TO CHAPTER I.

STATUTE OF FINES (p. 8).

THE intention and effect of this statute seem not to have been justly apprehended. In the first place, it is remarkable that the statute of Henry VII. is merely a transcript, with very little variation, from one of Richard III., which is actually printed in most editions. It was re-enacted, as we must presume, in order to obviate any doubt, however ill-grounded, which might hang upon the validity of Richard's laws. Thus vanish at once into air the deep policy of Henry VII. and his insidious schemes of leading on a prodigal aristocracy to its ruin. It is surely strange that these who have extolled this sagacious monarch for breaking the fetters of landed property (though many of them were lawyers) should never have observed that whatever credit might be due for the innovation should redound to the honour of the unfortunate usurper. But Richard, in truth, had no leisure for such long-sighted projects of strengthening a throne for his posterity which he could not preserve for himself. His law, and that of his successor, had a different object in view.

It would be useless to some readers, and perhaps disgusting to others, especially in the very outset of this work, to enter upon the history of the English law as to the power of alienation. But I cannot explain the present subject without mentioning that by a statute in the reign of Edward I., commonly called *de donis conditionalibus*, lands given to a man and the heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue or from those

who were to succeed them. Such lands were also not subject to forfeiture for treason or felony; and more, perhaps, upon this account than from any more enlarged principle, these entails were not viewed with favour by the courts of justice. Several attempts were successfully made to relax their strictness; and finally, in the reign of Edward IV., it was held by the judges in the famous case of Taltarum, that a tenant in tail might, by what is called suffering a common recovery, that is, by means of a fictitious process of law, divest all those who were to come after him of their succession, and become owner of the fee simple. Such a decision was certainly far beyond the sphere of judicial authority. The legislature, it was probably suspected, would not have consented to infringe a statute which they reckoned the safeguard of their families. The law, however, was laid down by the judges; and in those days the appellant jurisdiction of the house of lords, by means of which the aristocracy might have indignantly reversed the insidious decision, had gone wholly into disuse. It became by degrees a fundamental principle, that an estate in tail can be barred by a common recovery; nor is it possible by any legal subtlety to deprive the tenant of this control over his estate. Schemes were, indeed, gradually devised, which to a limited extent, have restrained the power of alienation; but these do not belong to our subject.

The real intention of these statutes of Richard and Henry was not to give the tenant in tail a greater power over his estate (for it is by no means clear that the words enable him to bar his issue by levying a fine; and when a decision to that

effect took place long afterwards (19 H. 8). It was with such difference of opinion that it was thought necessary to confirm the interpretation by a new act of parliament;) but rather, by establishing a short term of prescription, to put a check on the suits for recovery of lands, which, after times of so much violence and disturbance, were naturally springing up in the courts.

It is the usual policy of governments to favour possession; and on this principle the statute enacts that a fine levied with proclamations in a public court of justice shall after five years, except in particular circumstances, be a bar to all claims upon lands. This was its main scope; the liberty of alienation was neither necessary, nor probably intended to be given.*

* For these observations on the statute of fines I am principally indebted to Reeves's *History of the English Law* (iv. 133), a work, especially in the latter volumes, of great research and judgment; a continuation of which, in the same spirit and with the same qualities, would be a valuable accession not only to the lawyer's but philosopher's library. That entails had been defeated by means of a common recovery before the statute, had been remarked by former writers, and is indeed obvious; but the subject was never put in so clear a light as by Mr. Reeves.

The principle of breaking down the statute *de donis* was so little established, &c. consistently acted upon, in this reign, that in 11 H. 7 the judges held that the donor of an estate-tail might restrain the tenant from suffering a recovery. *Id.* p. 139, from the Year-book.

CHAPTER II.

ON THE ENGLISH CHURCH UNDER HENRY VIII.,
EDWARD VI., AND MARY.

§ 1. State of Public Opinion as to Religion. § 2. Henry VIII.'s Controversy with Luther. § 3. His Divorce from Catherine. § 4. Separation from the Church of Rome. § 5. Dissolution of Monasteries. § 6. Progress of the Reformed Doctrine in England. § 7. Its Establishment under Edward. § 8. Sketch of the chief Points of Difference between the two Religions. § 9. Opposition made by part of the Nation. § 10. Cranmer. His Moderation in introducing Changes not acceptable to the Zealots. § 11. Mary. Persecution under her. § 12. Its effect rather favourable to Protestantism.

§ 1. No revolution has ever been more gradually prepared than that which separated almost one half of Europe from the communion of the Roman see; nor were Luther and Zwingli any more than occasional instruments of that change, which, had they never existed, would at no great distance of time have been effected under the names of some other reformers. At the beginning of the sixteenth century the learned doubtfully and with caution, the ignorant with zeal and eagerness, were tending to depart from the faith and rites which authority prescribed. But probably not even Germany was so far advanced on this course as England. Almost a hundred and fifty years before Luther nearly the same doctrines as he taught had been maintained by Wicliffe, whose disciples, usually called Lollards, lasted as a numerous, though obscure and proscribed sect, till, aided by the confluence of foreign streams, they swelled into the Protestant Church of England. We hear, indeed, little of them during some part of the fifteenth century, for they generally shunned persecution; and it is chiefly through records of persecution that we learn the existence of heretics. But immediately before the name of Luther was known they seem to have become more numerous, or to have attracted more attention; since several persons were burned for heresy, and others abjured their errors, in the first years of Henry VIII.'s reign. Some of these (as usual among ignorant men engaging in religious speculations) are charged with very absurd notions; but it is not so material to observe their particular tenets as the general fact that an inquisitive and sectarian spirit had begun to prevail.

Those who took little interest in theological questions, or who retained an attachment to the faith in which they had been educated, were in general not less offended than the Lollards themselves with

the inordinate opulence and encroaching temper of the clergy. It had been for two or three centuries the policy of our lawyers to restrain these within some bounds. No ecclesiastical privilege had occasioned such dispute or proved so mischievous as the immunity of all tonsured persons from civil punishment for crimes. It was a material improvement in the law under Henry VI. that, instead of being instantly claimed by the bishop on their arrest for any criminal charge, they were compelled to plead their privilege at their arraignment, or after conviction. Henry VII. carried this much farther, by enacting that clerks convicted of felony should be burned in the hand. And in 1513 (4 H. 8), the benefit of clergy was entirely taken away from murderers and highway robbers. An exemption was still preserved for priests, deacons, and subdeacons. But this was not sufficient to satisfy the church, who had been accustomed to shield under the mantle of her immunity a vast number of persons in the lower degrees of orders, or without any orders at all; and had owed no small part of her influence to those who derived so important a benefit from her protection. Hence, besides violent language in preaching against this statute, the convocation attacked one Dr. Standish, who had denied the divine right of clerks to their exemption from temporal jurisdiction. The temporal courts naturally defended Standish; and the parliament addressed the king to support him against the malice of his persecutors. Henry, after a full debate between the opposite parties in his presence, thought his prerogative concerned in taking the same side, and the clergy sustained a mortifying defeat. About the same time a citizen of London, named Hun, having been confined on a charge of heresy in the bishop's prison, was found hanged in his chamber; and though this was asserted to be his own act, yet the bishop's chancellor was indicted for the murder on such vehement presumptions that he would infallibly have been convicted, had the attorney-general thought fit to proceed in the trial. This occurring at the same time with the affair of Standish, furnished each party with an argument; for the clergy maintained that they should have no chance of justice in a temporal court; one of the bishops declaring that the London juries were so prejudiced against the church that they would find Abel guilty of the murder of Cain. Such an admission is of more consequence than whether Hun died by his own hands or those of a clergyman; and the story is chiefly worth remembering, as it illustrates the popular disposition towards those who had once been the objects of reverence.

§ 2. Such was the temper of England when Martin Luther threw down his gauntlet of defiance against the ancient hierarchy of the Catholic church. But, ripe as a great portion of the people might be to applaud the efforts of this reformer, they were viewed with no

approbation by their sovereign. Henry had acquired a fair portion of theological learning, and on reading one of Luther's treatises, was not only shocked at its tenets, but undertook to refute them in a formal answer.¹ Kings who divest themselves of their robes to mingle among polemical writers have not perhaps a claim to much deference from strangers; and Luther, intoxicated with arrogance, and deeming himself a more prominent individual among the human species than any monarch, treated Henry, in replying to his book, with the rudeness that characterized his temper. A few years afterwards indeed he thought proper to write a letter of apology for the language he had held towards the king; but this letter, a strange medley of abjectness and impertinence, excited only contempt in Henry, and was published by him with a severe commentary.² Whatever apprehension, therefore, for the future might be grounded on the humour of the nation, no king in Europe appeared so steadfast in his allegiance to Rome as Henry VIII. at the moment when a storm sprang up that broke the chain for ever.

§ 3. It is certain that Henry's marriage with his brother's widow was unsupported by any precedent, and that although the pope's dispensation might pass for a cure of all defects, it had been originally considered by many persons in a very different light from those unions which are merely prohibited by the canons. He himself, on coming to the age of fourteen, entered a protest against the marriage which had been celebrated more than two years before, and declared his intention not to confirm it; an act which must naturally be ascribed to his father. It is true that in this very instrument we find no mention of the impediment on the score of affinity; yet it is hard to suggest any other objection, and possibly a common form had been adopted in drawing up the protest. He did not cohabit with Catherine during his father's lifetime. Upon his own accession he was remarried to her; and it does not appear manifest at what time his scruples began, nor whether they preceded his passion for Anne Boleyn. This, however, seems the more probable supposition; yet there can be little doubt that weariness of Catherine's person, a woman considerably older than himself, and unlikely to bear more children, had a far greater effect on his conscience than the study of Thomas Aquinas or any other theologian. It by no means follows from hence that, according to the casuistry of the

¹ Burnet is confident that the answer to Luther was not written by Henry (vol. III. 171), and others have been of the same opinion. The king, however, in his answer to Luther's apologetical letter, where this was insinuated, declares it to be his own. From Henry's general character and proneness to theological

disputation, it may be inferred that he had at least a considerable share in the work, though probably with the assistance of some who had more command of the Latin language.

² *Epist. Lutheri ad Henricum regem anglie, &c.* Lond. 1526. The letter bears date at Wittenberg, Sept. 1, 1525.

Catholic church and the principles of the canon law, the merits of that famous process were so much against Henry, as, out of dislike to him and pity for his queen, we are apt to imagine, and as the writers of that persuasion have subsequently assumed.

It would be unnecessary to repeat what is told by so many historians, the vacillating and evasive behaviour of Clement VII., the assurances he gave the king, and the arts with which he receded from them, the unfinished trial in England before his delegates, Campeggio and Wolsey, the opinions obtained from foreign universities in the king's favour, not always without a little bribery, and those of the same import at home, not given without a little intimidation, or the tedious continuance of the process after its adjournment to Rome. More than five years had elapsed from the first application to the pope, before Henry, though by nature the most uncontrollable of mankind, though irritated by perpetual chicanery and breach of promise, though stimulated by impatient love, presumed to set at nought the jurisdiction to which he had submitted, by a marriage with Anne. Even this was a furtive step; and it was not till compelled by the consequences that he avowed her as his wife, and was finally divorced from Catherine by a sentence of nullity, which would more decently no doubt have preceded his second marriage. But, determined as his mind had become, it was plainly impossible for Clement to have conciliated him by anything short of a decision which he could not utter without the loss of the emperor's favour, and the ruin of his own family's interests in Italy. And even for less selfish reasons it was an extremely embarrassing measure for the pope, in the critical circumstances of that age, to set aside a dispensation granted by his predecessor; knowing that, however some erroneous allegations of fact contained therein might serve for an outward pretext, yet the principle on which the divorce was commonly supported in Europe went generally to restrain the dispensing power of the holy see. It was the aim of Clement to delude Henry once more by his promises; but this was prevented by the more violent measure into which the cardinals forced him, of a definitive sentence in favour of Catherine, whom the king was required under pain of excommunication to take back as his wife. This sentence of the 23rd of March, 1534, proved a declaration of interminable war; and the king resolved to break off all intercourse for ever, and trust to his own prerogative and power over his subjects for securing the succession to the crown in the line which he designed.

§ 4. But, long before this final cessation of intercourse with that court, Henry had entered upon a course of measures which would have opposed fresh obstacles to a renewal of the connection. He had found a great part of his subjects in a disposition to go beyond

all he could wish in sustaining his quarrel, not in this instance from mere terror, but because a jealousy of ecclesiastical power and of the Roman court had long been a sort of national sentiment in England. The pope's avocation of the process to Rome, by which his duplicity and alienation from the king's side were made evident, and the disgrace of Wolsey, took place in the summer of 1529. The parliament which met soon afterwards was continued through several sessions (an unusual circumstance), till it completed the separation of this kingdom from the supremacy of Rome. In the progress of ecclesiastical usurpation, the papal and episcopal powers had lent mutual support to each other; both consequently were involved in the same odium, and had become the object of restrictions in a similar spirit. Warm attacks were made on the clergy by speeches in the commons, which bishop Fisher severely reprehended in the upper house. This provoked the commons to send a complaint to the king by their speaker, demanding reparation; and Fisher explained away the words that had given offence. An act passed to limit the fees on probates of wills, a mode of ecclesiastical extortion much complained of, and upon mortuaries. The next proceeding was of a far more serious nature. It was pretended that Wolsey's exercise of authority as papal legate contravened a statute of Richard II., and that both himself and the whole body of the clergy, by their submission to him, had incurred the penalties of a *præmunire*, that is, the forfeiture of their moveable estate, besides imprisonment at discretion. These old statutes in restraint of the papal jurisdiction had been so little regarded, and so many legates had acted in England without objection, that Henry's prosecution of the church on this occasion was extremely harsh and unfair. The clergy, however, now felt themselves to be the weaker party. In convocation they implored the king's clemency, and obtained it by paying a large sum of money. In their petition he was styled the protector and supreme head of the church and clergy of England. Many of that body were staggered at the unexpected introduction of a title that seemed to strike at the supremacy they had always acknowledged in the Roman see. And in the end it passed only with a very suspicious qualification, "so far as is permitted by the law of Christ." Henry had previously given the pope several intimations that he could proceed in his divorce without him. For, besides a strong remonstrance by letter from the temporal peers as well as bishops against the procrastination of sentence in so just a suit, the opinions of English and foreign universities had been laid before both houses of parliament and of convocation, and the divorce approved without difficulty in the former, and by a great majority in the latter. These proceedings took place in the first months of 1531, while the king's ambassadors at Rome were still pressing for a favourable sentence,

his legislative power in points of discipline, they seem to have attracted little peculiar attention at the time, and to have dropped off as a dead branch, when the axe had lopped the fibres that gave it nourishment. Like other momentous revolutions, this divided the judgment and feelings of the nation. In the previous affair of Catherine's divorce, generous minds were more influenced by the rigour and indignity of her treatment than by the king's inclinations, or the venal opinions of foreign doctors in law. Bellay, bishop of Bayonne, the French ambassador at London, wrote home in 1528 that a revolt was apprehended from the general unpopularity of the divorce. Much difficulty was found in procuring the judgments of Oxford and Cambridge against the marriage; which was effected in the former case, as is said, by excluding the masters of arts, the younger and less worldly part of the university, from their right of suffrage. Even so late as 1532, in the pliant house of commons a member had the boldness to move an address to the king that he would take back his wife. And this temper of the people seems to have been the great inducement with Henry to postpone any sentence by a domestic jurisdiction, so long as a chance of the pope's sanction remained.

The aversion entertained by a large part of the community, and especially of the clerical order, towards the divorce, was not perhaps so generally founded upon motives of justice and compassion as on the obvious tendency which its prosecution latterly manifested to bring about a separation from Rome. Though the principal Lutherans of Germany were far less favourably disposed to the king in their opinions on this subject than the catholic theologians, holding that the prohibition of marrying a brother's widow in the Levitical law was not binding on Christians, or at least that the marriage ought not to be annulled after so many years' continuance, yet in England the interests of Anne Boleyn and of the Reformation were considered as the same. She was herself strongly suspected of an inclination to the new tenets; and her friend Cranmer had been the most active person both in promoting the divorce and the recognition of the king's supremacy. The latter was, as I imagine, by no means unacceptable to the nobility and gentry, who saw in it the only effectual method of cutting off the papal exactions that had so long impoverished the realm; nor yet to the citizens of London and other large towns, who, with the same dislike of the Roman court, had begun to acquire some taste for the Protestant doctrine. But the common people, especially in remote countries, had been used to an implicit reverence for the holy see, and had suffered comparatively little by its impositions. They looked up also to their own teachers as guides in faith; and the main body of the clergy were certainly very reluctant to tear themselves, at the pleasure of a dis-

appointed monarch, in the most dangerous crisis of religion, from the bosom of catholic unity. They complied indeed with all the measures of government far more than men of rigid conscience could have endured to do; but many, who wanted the courage of More and Fisher, were not far removed from their way of thinking.³ This repugnance to so great an alteration showed itself above all in the monastic orders, some of whom by wealth, hospitality, and long-established dignity, others by activity in preaching and confessing, enjoyed a very considerable influence over the poorer class. But they had to deal with a sovereign whose policy as well as temper dictated that he had no safety but in advancing; and their disaffection to his government, while it overwhelmed them in ruin, produced a second grand innovation in the ecclesiastical polity of England.

§ 5. The enormous, and in a great measure ill-gotten, opulence of the regular clergy had long since excited jealousy in every part of Europe. Though the statutes of mortmain under Edward I. and Edward III. had put some obstacle to its increase, yet, as these were eluded by licences of alienation, a larger proportion of landed wealth was constantly accumulating in hands which lost nothing that they had grasped. A writer much inclined to partiality towards the monasteries says that they held not one-fifth part of the kingdom; no insignificant patrimony! He adds, what may probably be true, that through granting easy leases they did not enjoy more than one-tenth in value. These vast possessions were very unequally distributed among four or five hundred monasteries. Some abbots, as those of Reading, Glastonbury, and Battle, lived in princely splendour, and were in every sense the spiritual peers and magnates of the realm. In other foundations the revenues did little more than afford a subsistence for the monks, and defray the needful expenses. As they were in general exempted from episcopal visitation, and entrusted with the care of their own discipline, such abuses had gradually prevailed and gained strength by connivance as we may naturally expect in corporate bodies of men leading almost of necessity useless and indolent lives, and in whom very indistinct views of moral obligations were combined with a great facility of violating them. The vices that for many ages had been

³ Strype, *passim*. Tunstal, Gardiner, and Bonner wrote in favour of the royal supremacy; all of them, no doubt, insincerely. The first of these has escaped severe censure by the mildness of his general character, but was full as much a temporiser as Cranmer. But the history of this period has been written with such undisguised partiality by Burnet

and Strype on the one hand, and lately by Dr. Lingard on the other, that it is almost amusing to find the most opposite conclusions and general results from nearly the same premises. Collier, though with many prejudices of his own, is, all things considered, the fairest of our ecclesiastical writers as to this reign.

own thus lopped off, the spiritual aristocracy was reduced to play a very secondary part in the councils of the nation. Nor could the Protestant religion have easily been established by legal methods under Edward and Elizabeth without this previous destruction of the monasteries. I must own myself of opinion, both that the abolition of monastic institutions might have been conducted in a manner consonant to justice as well as policy, and that Henry's profuse alienation of the abbey lands, however illandable in its motive, has proved upon the whole more beneficial to England than any other disposition would have turned out. I cannot, until some broad principle is made more obvious than it ever has yet been, do such violence to all common notions on the subject, as to attach an equal inviolability to private and corporate property. In estates held, as we call it, in mortmain, there is no intercommunity, no natural privity of interest, between the present possessor and those who may succeed him; and as the former cannot have any pretext for complaint, if, his own rights being preserved, the legislature should alter the course of transmission after his decease, so neither is any hardship sustained by others, unless their succession has been already designated or rendered probable. Corporate property therefore appears to stand on a very different footing from that of private individuals; and while all infringements of the established privileges of the latter are to be sedulously avoided, and held justifiable only by the strongest motives of public expediency, we cannot but admit the full right of the legislature to new-mould and regulate the former, in all that does not involve existing interests, upon far slighter reasons of convenience. If Henry had been content with prohibiting the profession of religious persons for the future, and had gradually diverted their revenues instead of violently confiscating them, no Protestant could have found it easy to censure his policy.

It is indeed impossible to feel too much indignation at the spirit in which these proceedings were conducted. Besides the hardship sustained by so many persons turned loose upon society, for whose occupations they were unfit, the indiscriminate destruction of convents produced several public mischiefs. The visitors themselves strongly interceded for the nunnery of Godstow, as irreproachably managed, and an excellent place of education; and no doubt some other foundations should have been preserved for the same reason. Latimer, who could not have a prejudice on that side, begged earnestly that the priory of Malvern might be spared for the maintenance of preaching and hospitality. It was urged for Hexham abbey that, there not being a house for many miles in that part of England, the country would be in danger of going to waste. And the total want of inns in many parts of the kingdom must have

rendered the loss of these hospitable places of reception a serious grievance. These, and probably other reasons, ought to have checked the destroying spirit of reform in its career, and suggested to Henry's councillors, that a few years would not be ill consumed in contriving new methods of attaining the beneficial effects which monastic institutions had not failed to produce, and in preparing the people's minds for so important an innovation.

The suppression of monasteries poured in an instant such a torrent of wealth upon the crown as has seldom been equalled in any country by the confiscations following a subdued rebellion. The clear yearly value was rated at 131,607*l.*; but was in reality, if we believe Burnet, ten times as great; the courtiers undervaluing those estates in order to obtain grants or sales of them more easily. It is certain, however, that Burnet's supposition errs extravagantly on the other side. The moveables of the smaller monasteries alone were reckoned at 100,000*l.*; and as the rents of these were less than a fourth of the whole, we may calculate the aggregate value of moveable wealth in the same proportion. All this was enough to dazzle a more prudent mind than that of Henry, and to inspire those sanguine dreams of inexhaustible affluence with which private men are so often filled by sudden prosperity.

The greater part of these immense endowments was dissipated in profuse grants to the courtiers, who frequently contrived to veil their acquisitions under cover of a purchase from the crown. It has been surmised that Cromwell, in his desire to promote the Reformation, advised the king to make this partition of abbey lands among the nobles and gentry, either by grant, or by sale on easy terms, that, being thus bound by the sure ties of private interest, they might always oppose any return towards the dominion of Rome. In Mary's reign, accordingly, her parliament, so obsequious in all matters of religion, adhered with a firm grasp to the possession of church lands; nor could the papal supremacy be re-established until a sanction was given to their enjoyment. And we may ascribe part of the zeal of the same class in bringing back and preserving the reformed church under Elizabeth to a similar motive; not that these gentlemen were hypocritical pretenders to a belief they did not entertain, but that, according to the general laws of human nature, they gave a readier reception to truths which made their estates more secure.

But, if the participation of so many persons in the spoils of ecclesiastical property gave stability to the new religion, by pledging them to its support, it was also of no slight advantage to our civil constitution, strengthening, and as it were infusing new blood into, the territorial aristocracy, who were to withstand the enormous prerogative of the crown. For if it be true, as surely it is, that wealth

is power, the distribution of so large a portion of the kingdom among the nobles and gentry, the elevation of so many new families, and the increased opulence of the more ancient, must have sensibly affected their weight in the balance. Those families indeed, within or without the bounds of the peerage, which are now deemed the most considerable, will be found, with no great number of exceptions, to have first become conspicuous under the Tudor line of kings; and, if we could trace the titles of their estates, to have acquired no small portion of them, mediately or immediately, from monastic or other ecclesiastical foundations.

A very ungrounded prejudice had long obtained currency, and notwithstanding the contradiction it has experienced in our more accurate age, seems still not eradicated, that the alms of monasteries maintained the indigent throughout the kingdom, and that the system of parochial relief, now so much the topic of complaint, was rendered necessary by the dissolution of those beneficent foundations. There can be no doubt that many of the impotent poor derived support from their charity. But the blind eleemosynary spirit inculcated by the Romish church is notoriously the cause, not the cure, of beggary and wretchedness. The monastic foundations, scattered in different counties, but by no means at regular distances, and often in sequestered places, could never answer the end of local and limited succour, meted out in just proportion to the demands of poverty. Their gates might indeed be open to those who knocked at them for alms, and came in search of streams that must always be too scanty for a thirsty multitude. Nothing could have a stronger tendency to promote that vagabond mendicity, which unceasing and very severe statutes were enacted to repress. It was and must always continue a hard problem, to discover the means of rescuing those whom labour cannot maintain from the last extremities of helpless suffering. The regular clergy were in all respects ill fitted for this great office of humanity. Even while the monasteries were yet standing, the scheme of a provision for the poor had been adopted by the legislature, by means of regular collections, which in the course of a long series of statutes, ending in the 43rd of Elizabeth, were almost insensibly converted into compulsory assessments.* It is by no means probable that, however some in particular districts may have had to lament the cessation of hospitality in the convents, the poor in general, after some time,

* The first act for the relief of the impotent poor passed in 1535 (27 H. 8, c. 25). By this statute no alms were allowed to be given to beggars, on pain of forfeiting ten times the value; but a collection was to be made in every parish. The compulsory contributions, properly

speaking, began in 1573 (14 Eliz. c. 5). But by an earlier statute, 1 Edw. 6, c. 3, the bishop was empowered to proceed in his court against such as should refuse to contribute, or dissuade others from doing so.

were placed in a worse condition by their dissolution; nor are we to forget that the class to whom the abbey lands have fallen have been distinguished at all times, and never more than in the first century after that transference of property, for their charity and munificence.

These two great political measures—the separation from the Roman see, and the suppression of monasteries—so broke the vast power of the English clergy, and humbled their spirit, that they became the most abject of Henry's vassals, and dared not offer any steady opposition to his caprice, even when it led him to make innovations in the essential parts of their religion. It is certain that a large majority of that order would gladly have retained their allegiance to Rome, and that they viewed with horror the downfall of the monasteries. In rending away so much that had been incorporated with the public faith Henry seemed to prepare the road for the still more radical changes of the reformers. These, a numerous and increasing sect, exulted by turns in the innovations he promulgated, lamented their dilatoriness and imperfection, or trembled at the re-action of his bigotry against themselves. Trained in the school of theological controversy, and drawing from those bitter waters fresh aliment for his sanguinary and imperious temper, he displayed the impartiality of his intolerance by alternately persecuting the two conflicting parties. We all have read how three persons convicted of disputing his supremacy, and three deniers of transubstantiation, were drawn on the same hurdle to execution. But the doctrinal system adopted by Henry in the latter years of his reign, varying, indeed, in some measure from time to time, was about equally removed from popish and protestant orthodoxy. The corporal presence of Christ in the consecrated elements was a tenet which no one might dispute without incurring the penalty of death by fire; and the king had a capricious partiality to the Romish practice in those very points where a great many real catholics on the Continent were earnest for its alteration, the communion of the laity by bread alone, and the celibacy of the clergy. But in several other respects he was wrought upon by Cranmer to draw pretty near to the Lutheran creed, and to permit such explications to be given in the books set forth by his authority, the Institution, and the Erudition of a Christian Man, as, if they did not absolutely proscribe most of the ancient opinions, threw at best much doubt upon them, and gave intimations which the people, now become attentive to these questions, were acute enough to interpret.

§ 6. It was natural to suspect, from the previous temper of the nation, that the revolutionary spirit which blazed out in Germany would spread rapidly over England. Books printed in Germany or in the Flemish provinces, where at first the administration con-

nived at the new religion, were imported and read with that eagerness and delight which always compensate the risk of forbidden studies. Wolsey, who had no turn towards persecution, contented himself with ordering heretical writings to be burned, and strictly prohibiting their importation. But to withstand the course of popular opinion is always like a combat against the elements in commotion; nor is it likely that a government far more steady and unanimous than that of Henry VIII. could have effectually prevented the diffusion of Protestantism. And the severe punishment of many zealous reformers in the subsequent part of this reign tended, beyond a doubt, to excite a favourable prejudice for men whose manifest sincerity, piety, and constancy in suffering, were as good pledges for the truth of their doctrine, as the people had been always taught to esteem the same qualities in the legends of the early martyrs.

One of the books originally included in the list of proscription among the writings of Luther and the foreign Protestants was a translation of the New Testament into English by Tyndale, printed at Antwerp in 1526. A complete version of the Bible, partly by Tyndale, and partly by Coverdale, appeared, perhaps at Hamburg, in 1535; a second edition, under the name of Matthews, following in 1537; and as Cranmer's influence over the king became greater, and his aversion to the Roman church more inveterate, so material a change was made in the ecclesiastical policy of this reign as to direct the Scriptures in this translation (but with corrections in many places) to be set up in parish churches, and permit them to be publicly sold. This measure had a strong tendency to promote the Reformation, especially among those who were capable of reading; not, surely, that the controverted doctrines of the Romish church are so palpably erroneous as to bear no sort of examination, but because such a promulgation of the Scriptures at that particular time seemed both tacitly to admit the chief point of contest, that they were the exclusive standard of Christian faith, and to lead the people to interpret them with that sort of prejudice which a jury would feel in considering evidence that one party in a cause had attempted to suppress; a danger which those who wish to restrain the course of free discussion without very sure means of success will in all ages do well to reflect upon.

The great change of religious opinions was not so much effected by reasoning on points of theological controversy, upon which some are apt to fancy it turned, as on a persuasion that fraud and corruption pervaded the established church. The pretended miracles, which had so long held the understanding in captivity, were wisely exposed to ridicule and indignation by the government. Plays and interludes were represented in churches, of which the usual subject

was the vices and corruptions of the monks and clergy. These were disapproved of by the graver sort, but no doubt served a useful purpose. The press sent forth its light hosts of libels; and though the catholic party did not fail to try the same means of influence, they had both less liberty to write as they pleased, and fewer readers than their antagonists.

§ 7. In this feverish state of the public mind on the most interesting subject ensued the death of Henry VIII., who had excited and kept it up. More than once, during the latter part of his capricious reign, the popish party, headed by Norfolk and Gardiner, had gained an ascendant, and several persons had been burned for denying transubstantiation. But at the moment of his decease Norfolk was a prisoner attainted of treason, Gardiner in disgrace, and the favour of Cranmer at its height. It is said that Henry had meditated some further changes in religion. Of his executors, the greater part, as their subsequent conduct evinces, were nearly indifferent to the two systems, except so far as more might be gained by innovation. But Somerset, the new protector, appears to have inclined sincerely towards the Reformation, though not wholly uninfluenced by similar motives. His authority readily overcame all opposition in the council; and it was soon perceived that Edward, whose singular precocity gave his opinions in childhood an importance not wholly ridiculous, had imbibed a steady and ardent attachment to the new religion, which probably, had he lived longer, would have led him both to diverge farther from what he thought an idolatrous superstition, and to have treated its adherents with severity. Under his reign, accordingly, a series of alterations in the tenets and homilies of the English church were made, the principal of which I shall point out, without following a chronological order, or adverting to such matters of controversy as did not produce a sensible effect on the people.

§ 8. I. It was obviously among the first steps required in order to introduce a mode of religion at once more reasonable and more earnest than the former, that the public services of the church should be expressed in the mother tongue of the congregation. The Latin ritual had been unchanged ever since the age when it was vernacular; partly through a sluggish dislike of innovation, but partly also because the mysteriousness of an unknown dialect served to impose on the vulgar, and to throw an air of wisdom around the priesthood. Yet what was thus concealed would have borne the light. Our own liturgy, so justly celebrated for its piety, elevation, and simplicity, is in great measure a translation from the catholic services, or more properly from those which had been handed down from a more primitive age; those portions, of course, being omitted which had relation to different principles of worship. In the second year of

Edward's reign, the reformation of the public service was accomplished, and an English liturgy compiled, not essentially different from that in present use.

II. No part of exterior religion was more prominent or more offensive to those who had imbibed a protestant spirit than the worship, or at least veneration, of images, which in remote and barbarous ages had given excessive scandal both in the Greek and Latin churches, though long fully established in the practice of each. The populace in towns where the reformed tenets prevailed began to pull them down in the very first days of Edward's reign; and after a little pretence at distinguishing those which had not been abused, orders were given that all images should be taken away from churches. But this order was executed with a rigour which lovers of art and antiquity have long deplored. Our churches bear witness to the devastation committed in the wantonness of triumphant reform by defacing statues and crosses on the exterior of buildings intended for worship, or windows and monuments within. Missals and other books dedicated to superstition perished in the same manner. Altars were taken down, and a great variety of ceremonies abrogated, such as the use of incense, tapers, and holy water; and though more of these were retained than eager innovators could approve, the whole surface of religious ordinances, all that is palpable to common minds, underwent a surprising transformation.

III. But this change in ceremonial observances and outward show was trifling when compared to that in the objects of worship, and in the purposes for which they were addressed. Those who have visited some catholic temples, and attended to the current language of devotion, must have perceived, what the writings of apologists or decrees of councils will never enable them to discover, that the saints, but more especially the Virgin, are almost exclusively the *popular* deities of that religion. All this polytheism was swept away by the reformers; and in this may be deemed to consist the most specific difference of the two systems. Nor did they spare the belief in purgatory, that unknown land which the hierarchy swayed with so absolute a rule, and to which the earth had been rendered a tributary province. Yet in the first liturgy put forth under Edward the prayers for departed souls were retained; whether out of respect to the prejudices of the people or to the immemorial antiquity of the practice. But such prayers, if not necessarily implying the doctrine of purgatory (which yet in the main they appear to do), are at least so closely connected with it that the belief could never be eradicated while they remained. Hence, in the revision of the liturgy, four years afterwards, they were laid aside; and several other changes made, to eradicate the vestiges of the ancient superstition.

IV. Auricular confession, as commonly called, or the private and

special confession of sins to a priest for the purpose of obtaining his absolution, an imperative duty in the church of Rome, and preserved as such in the statute of the six articles, and in the religious codes published by Henry VIII., was left to each man's discretion in the new order; a judicious temperament, which the reformers would have done well to adopt in some other points. And thus, while it has never been condemned in our church, it went without dispute into complete neglect.

V. It has very rarely been the custom of theologians to measure the importance of orthodox opinions by their effect on the lives and hearts of those who adopt them; nor was this predilection for speculative above practical doctrines ever more evident than in the leading controversy of the sixteenth century, that respecting the Lord's Supper. Four principal theories, to say nothing of subordinate varieties, divided Europe at the accession of Edward VI. about the sacrament of the Eucharist. (i.) The church of Rome would not depart a single letter from transubstantiation, or the change at the moment of consecration of the substances of bread and wine into those of Christ's body and blood; the accidents, in school language, or sensible qualities of the former remaining, or becoming inherent in the new substance. (ii.) Luther, partly, as it seems, out of his determination to multiply differences with the church, invented a theory somewhat different, usually called consubstantiation, which was adopted in the confession of Augsburg, and to which, at least down to the middle of the eighteenth century, the divines of that communion were much attached. They imagined the two substances to be united in the sacramental elements, so that they might be termed bread and wine, or the body and blood, with equal propriety. But it must be obvious that there is little more than a metaphysical distinction between this doctrine and that of Rome; though, when it suited the Lutherans to magnify rather than dissemble their deviations from the mother church, it was raised into an important difference. (iii.) A simpler and more rational explication occurred to Zwingli and Œcolampadius, from whom the Helvetic protestants imbibed their faith. Rejecting every notion of a real presence, and divesting the institution of all its mystery, they saw only figurative symbols in the elements which Christ had appointed as a commemoration of his death. But this novel opinion excited as much indignation in Luther as in the Romanists. It was indeed a rock on which the Reformation was nearly shipwrecked; since the violent contests which it occasioned, and the narrow intolerance which one side at least displayed throughout the controversy, not only weakened on several occasions the temporal power of the protestant churches, but disgusted many of those who might have inclined towards espousing their senti-

ments. (iv.) Besides these three hypotheses, a fourth was promulgated by Martin Bucer of Strasburg, a man of much acuteness but prone to metaphysical subtilty, and not, it is said, of a very ingenuous character. Bucer, as I apprehend, though his expressions are unusually confused, did not acknowledge a local presence of Christ's body and blood in the elements after consecration—so far concurring with the Helvetians; while he contended that they were really, and without figure, received by the worthy communicants through faith, so as to preserve the belief of a mysterious union and of what was sometimes called a real presence. Bucer himself came to England early in the reign of Edward, and had a considerable share in advising the measures of reformation. But Peter Martyr, a disciple of the Swiss school, had also no small influence. In the forty-two articles set forth by authority, the real or corporal presence, using these words as synonymous, is explicitly denied. This clause was omitted on the revision of the articles under Elizabeth.

VI. These various innovations were exceedingly inimical to the influence and interests of the priesthood. But that order obtained a sort of compensation in being released from its obligation to celibacy. This obligation, though unwarranted by Scripture, rested on a most ancient and universal rule of discipline; for though the Greek and Eastern churches have always permitted the ordination of married persons, yet they do not allow those already ordained to take wives. No very good reason, however, could be given for this distinction, and the constrained celibacy of the Latin clergy had given rise to many mischiefs, of which their general practice of retaining concubines might be reckoned among the smallest. The German protestants soon rejected this burthen, and encouraged regular as well as secular priests to marry. Cranmer had himself taken a wife in Germany, whom Henry's law of the six articles, one of which made the marriage of priests felony, compelled him to send away. In the reign of Edward this was justly reckoned an indispensable part of the new Reformation. But the bill for that purpose passed the lords with some little difficulty, nine bishops and four peers dissenting; and its preamble cast such an imputation on the practice it allowed, treating the marriage of priests as ignominious and a tolerated evil, that another act was thought necessary a few years afterwards, when the Reformation was better established, to vindicate this right of the protestant church.⁵ A great number of the clergy availed themselves of their liberty; which may probably have had as extensive an effect in conciliating the ecclesiastical profession, as the suppression of monasteries had in rendering the gentry favourable to the new order of religion.

⁵ Stat. 2 & 3 Edw. 6, c. 21; 5 & 6 Edw. 6, c. 12; Burret, 89.

§ 9. But great as was the number of those whom conviction or self-interest enlisted under the protestant banner, it appears plain that the Reformation moved on with too precipitate a step for the majority. The new doctrines prevailed in London, in many large towns, and in the eastern counties. But in the north and west of England the body of the people were strictly catholics. The clergy, though not very scrupulous about conforming to the innovations, were generally averse to most of them. And, in spite of the church lands, I imagine that most of the nobility, if not the gentry, inclined to the same persuasion; not a few peers having sometimes dissented from the bills passed on the subject of religion in this reign, while no sort of disagreement appears in the upper house during that of Mary. In the western insurrection of 1549, which partly originated in the alleged grievance of inclosures, many of the demands made by the rebels go to the entire re-establishment of popery. Those of the Norfolk insurgents, in the same year, whose political complaints were the same, do not, as far as I perceive, show any such tendency. But an historian, whose bias was certainly not unfavourable to protestantism, confesses that all endeavours were too weak to overcome the aversion of the people towards Reformation, and even intimates that German troops were sent for from Calais on account of the bigotry with which the bulk of the nation adhered to the old superstition.⁶ This is somewhat an humiliating admission, that the protestant faith was imposed upon our ancestors by a foreign army. The demolition of shrines and images was an overt insult on every catholic heart. Still more were they exasperated at the ribaldry which vulgar protestants uttered against their most sacred mystery. Nor could the people repose much confidence in the judgment and sincerity of their governors, whom they had seen submitting without outward repugnance to Henry's various schemes of religion, and whom they saw every day enriching themselves with the plunder of the church they affected to reform. Almost every bishopric was spoiled by their ravenous power in this reign, either through mere alienations, or long leases, or unequal exchanges. Exeter and Llandaff, from being among the richest sees, fell into the class of the poorest. Lichfield lost the chief part of its lands to raise an estate for lord Paget. London, Winchester, and even Canterbury, suffered considerably. The duke of Somerset was much beloved; yet he had given no unjust offence by pulling down

⁶ Burnet, III. 190, 196. This seems rather to refer to the upper classes than to the whole people. But at any rate it was an exaggeration of the fact, the protestants being certainly in a much greater proportion. Paget was the adviser of the scheme

of sending for German troops in 1549, which, however, was in order to quell a seditious spirit in the nation, not by any means wholly founded upon religious grounds. Strype, xi. 169.

some churches in order to erect Somerset House with the materials. He had even projected the demolition of Westminster Abbey, but the chapter averted this outrageous piece of rapacity, sufficient of itself to characterize that age, by the usual method, a grant of some of their estates.

Tolerance in religion, it is well known, so unanimously admitted (at least verbally) even by theologians in the present century, was seldom considered as practicable, much less as a matter of right, during the period of the Reformation. The difference in this respect between the catholics and protestants was only in degree, and in degree there was much less difference than we are apt to believe. The Roman worship was proscribed in England. Many persons were sent to prison for hearing mass, and similar offences. The princess Mary supplicated in vain to have the exercise of her own religion at home, and Charles V. several times interceded in her behalf; but though Cranmer and Ridley, as well as the council, would have consented to this indulgence, the young king, whose education had unhappily infused a good deal of bigotry into his mind, could not be prevailed upon to connive at such idolatry.

§ 10. The person most conspicuous, though Ridley was perhaps the most learned divine, in moulding the faith and discipline of the English Church, which has not been very materially altered since his time, was archbishop Cranmer. Few men, about whose conduct there is so little room for controversy upon facts, have been represented in more opposite lights. We know the favouring colours of protestant writers; but turn to the bitter invective of Bossuet, and the patriarch of our reformed church stands forth as the most abandoned of time-serving hypocrites. If, casting away all prejudice on either side, we weigh the character of this prelate in an equal balance, he will appear far indeed removed from the turpitude imputed to him by his enemies, yet not entitled to any extraordinary veneration. Though it is most eminently true of Cranmer, that his faults were always the effect of circumstances, and not of intention, yet this palliating consideration is rather weakened when we recollect that he consented to place himself in a station where those circumstances occurred. At the time of Cranmer's elevation to the see of Canterbury, Henry, though on the point of separating for ever from Rome, had not absolutely determined upon so strong a measure; and his policy required that the new archbishop should solicit the usual bulls from the pope, and take the oath of canonical obedience to him. Cranmer, already a rebel from that dominion in his heart, had recourse to the disingenuous shift of a protest, before his consecration, that "he did not intend to restrain himself thereby from any thing to which he was bound by his duty to God or the king, or from taking part in any reformation of the English church

which he might judge to be required." 'This first deviation from integrity, as is almost always the case, drew after it many others, and began that discreditable course of temporising and undue compliance to which he was reduced for the rest of Henry's reign. Cranmer's abilities were not perhaps of a high order, or at least they were unsuited to public affairs; but his principal defect was in that firmness by which men of more ordinary talents may insure respect. Nothing could be weaker than his conduct in the usurpation of lady Jane, which he might better have boldly sustained, like Ridley, as a step necessary for the conservation of protestantism, than given into against his conscience, overpowered by the importunities of a misguided boy. Had the malignity of his enemies been directed rather against his reputation than his life, had he been permitted to survive his shame as a prisoner in the Tower, it must have seemed a more arduous task to defend the memory of Cranmer, but his fame has brightened in the fire that consumed him.

Those who, with the habits of thinking that prevail in our times, cast back their eyes on the reign of Edward VI., will generally be disposed to censure the precipitancy, and still more the exclusive spirit, of our principal reformers. But relatively to the course that things had taken in Germany, and to the feverish zeal of that age, the moderation of Cranmer and Ridley, the only ecclesiasties who took a prominent share in these measures, was very conspicuous, and tended above everything to place the Anglican church in that middle position which it has always preserved between the Roman hierarchy and that of other protestant denominations. Cranmer, during the reign of Henry, had bent, as usual, to the king's despotic humour, and favoured a novel theory of ecclesiastical authority, which resolved all its spiritual as well as temporal powers into the royal supremacy. Accordingly, at the accession of Edward, he himself, and several other bishops, took out commissions to hold their sees during pleasure. But when the necessity of compliance had passed by, they showed a disposition not only to oppose the continual spoliation of church property, but to maintain the jurisdiction which the canon law had conferred upon them. And though, as this papal code did not appear very well adapted to a protestant church, a new scheme of ecclesiastical laws was drawn up, which the king's death rendered abortive, this was rather calculated to strengthen the hands of the spiritual courts than to withdraw any matter from their cognizance.

The policy, or it may be the prejudices, of Cranmer induced him also to retain in the church a few ceremonial usages, which the Helvetic, though not the Lutheran, reformers had swept away, such as the copes and rochets of bishops, and the surplice of officiating priests. It should seem inconceivable that any one could object to

these vestments, considered in themselves ; far more, if they could answer in the slightest degree the end of conciliating a reluctant people. But this motive unfortunately was often disregarded in that age ; and indeed in all ages an abhorrence of concession and compromise is a never-failing characteristic of religious factions. The foreign reformers then in England, two of whom, Bucer and Peter Martyr, enjoyed a deserved reputation, expressed their dissatisfaction at seeing these habits retained, and complained, in general, of the backwardness of the English reformation. Calvin and Bullinger wrote from Switzerland in the same strain. Nor was this sentiment by any means confined to strangers. Hooper, an eminent divine, having been elected bishop of Gloucester, refused to be consecrated in the usual dress. It marks, almost ludicrously, the spirit of those times, that, instead of permitting him to decline the station, the council sent him to prison for some time, until by some mutual concessions the business was adjusted. These events it would hardly be worth while to notice in such a work as the present if they had not been the prologue to a long and serious drama.

§ 11. It is certain that the re-establishment of popery on Mary's accession must have been acceptable to a large part, or perhaps to the majority, of the nation. There is reason, however, to believe that the reformed doctrine had made a real progress in the few years of her brother's reign. The counties of Norfolk and Suffolk, which placed Mary on the throne as the lawful heir, were chiefly protestant, and experienced from her the usual gratitude and good faith of a bigot. Noailles bears witness, in many of his despatches, to the unwillingness which great numbers of the people displayed to endure the restoration of popery, and to the queen's excessive unpopularity, even before her marriage with Philip had been resolved upon. As for the higher classes, they partook far less than their inferiors in the religious zeal of that age. Henry, Edward, Mary, Elizabeth, found almost an equal compliance with their varying schemes of faith. Yet the larger proportion of the nobility and gentry appear to have preferred the catholic religion. Several peers opposed the bills for reformation under Edward ; and others, who had gone along with the current, became active counsellors of Mary. Not a few persons of family emigrated in the latter reign ; but with the exception of the second earl of Bedford, who suffered a short imprisonment on account of religion, the protestant martyrology contains no confessor of superior rank. The same accommodating spirit characterised, upon the whole, the clergy ; and would have been far more general, if a considerable number had not availed themselves of the permission to marry granted by Edward ; which led to their expulsion from their cures on his sister's coming to the throne. Yet it was not the temper of Mary's parliaments, whatever

pains had been taken about their election, to second her bigotry in surrendering the temporal fruits of their recent schism. The bill for restoring first fruits and impropriations in the queen's hands to the church passed not without difficulty; and it was found impossible to obtain a repeal of the act of supremacy without the pope's explicit confirmation of the abbey lands to their new proprietors. Even this confirmation, though made through the legate cardinal Pole, by virtue of a full commission, left not unreasonably an apprehension that, on some better opportunity, the imprescriptible nature of church property might be urged against the possessors. With these selfish considerations others of a more generous nature conspired to render the old religion more obnoxious than it had been at the queen's accession. Her marriage with Philip, his encroaching disposition, the arbitrary turn of his counsels, the insolence imputed to the Spaniards who accompanied him, the unfortunate loss of Calais through that alliance, while it thoroughly alienated the kingdom from Mary, created a prejudice against the religion which the Spanish court so steadily favoured. So violent indeed was the hatred conceived by the English nation against Spain during the short period of Philip's marriage with their queen, that it diverted the old channel of public feelings, and almost put an end to that dislike and jealousy of France which had so long existed. For at least a century after this time we rarely find in popular writers any expressions of hostility towards that country; though their national manners, so remote from our own, are not unfrequently the object of ridicule. The prejudices of the populace, as much as the policy of our counsellors, were far more directed against Spain.

§ 12. But what had the greatest efficacy in disgusting the English with Mary's system of faith, was the cruelty by which it was accompanied. Though the privy council were in fact continually urging the bishops forward in this prosecution, the latter bore the chief blame, and the abhorrence entertained for them naturally extended to the doctrine they professed. A sort of instinctive reasoning told the people, what the learned on neither side had been able to discover, that the truth of a religion begins to be very suspicious when it stands in need of prisons and scaffolds to eke out its evidences. And as the English were constitutionally humane, and not hardened by continually witnessing the infliction of barbarous punishments, there arose a sympathy for men suffering torments with such meekness and patience, which the populace of some other nations were perhaps less apt to display, especially in executions on the score of heresy. The theologian indeed and the philosopher may concur in deriding the notion that either sincerity or moral rectitude can be the test of truth; yet among the various species of authority to which recourse had been had to supersede or to supply the deficiencies

formists with all changes, and of some known friends to the protestant interest. But two of these, Ceeil and Bacon, were so much higher in her confidence, and so incomparably superior in talents to the other counsellors, that it was evident which way she must incline. The parliament met about two months after her accession. The creed of parliament from the time of Henry VIII. had been always that of the court; whether it were that elections had constantly been influenced, as we know was sometimes the case, or that men of adverse principles, yielding to the torrent, had left the way clear to the partisans of power. This first, like all subsequent parliaments, was to the full as favourable to protestantism as the queen could desire: the first-fruits of benefices, and, what was far more important, the supremacy in ecclesiastical affairs, were restored to the crown; the laws made concerning religion in Edward's time were re-enacted. These acts did not pass without considerable opposition among the lords; nine temporal peers, besides all the bishops, having protested against the bill of uniformity establishing the Anglican liturgy, though some pains had been taken to soften the passages most obnoxious to catholics. But the act restoring the royal supremacy met with less resistance; whether it were that the system of Henry retained its hold over some minds, or that it did not enroach, like the former, on the liberty of conscience, or that men not over-serupulous were satisfied with the interpretation which the queen caused to be put upon the oath.

Several of the bishops had submitted to the Reformation under Edward VI. But they had acted, in general, so conspicuous a part in the late restoration of popery, that, even amidst so many examples of false profession, shame restrained them from a second apostasy. Their number happened not to exceed sixteen, one of whom was prevailed on to conform; while the rest, refusing the oath of supremacy, were deprived of their bishopries by the court of ecclesiastical high commission. In the summer of 1559 the queen appointed a general ecclesiastical visitation, to compel the observance of the protestant formularies. It appears from their reports that only about one hundred dignitaries, and eighty parochial priests, resigned their benefices, or were deprived. Men eminent for their zeal in the protestant cause, and most of them exiles during the persecution, occupied the vacant sees. And thus, before the end of 1559, the English church, so long contended for as a prize by the two religions, was lost for ever to that of Rome.

§ 2. These two statutes, commonly denominated the *Acts of Supremacy and Uniformity*,¹ form the basis of that restrictive code of laws, deemed by some one of the fundamental bulwarks, by

¹ 1 Eliz. c. 1. See Note at end of chapter. 'The Oath of Supremacy.'

others the reproach of our constitution, which pressed so heavily for more than two centuries upon the adherents to the Romish church. By the former all beneficed ecclesiastics, and all laymen holding office under the crown, were obliged to take the oath of supremacy, renouncing the spiritual as well as temporal jurisdiction of every foreign prince or prelate, on pain of forfeiting their office or benefice; and it was rendered highly penal, and for the third offence treasonable, to maintain such supremacy by writing or advised speaking. The latter statute trenched more on the natural rights of conscience; prohibiting, under pain of forfeiting goods and chattels for the first offence, of a year's imprisonment for the second, and of imprisonment during life for the third, the use by a minister, whether beneficed or not, of any but the established liturgy; and imposed a fine of one shilling on all who should absent themselves from church on Sundays and holydays.²

§ 3. This act operated as an absolute interdiction of the catholic rites, however privately celebrated. It has frequently been asserted, that the government connived at the domestic exercise of that religion during these first years of Elizabeth's reign. This may possibly have been the case with respect to some persons of very high rank whom it was inexpedient to irritate. But we find instances of severity towards catholics, even in that early period; and it is evident that their solemn rites were only performed by stealth, and at much hazard. This commencement of persecution induced many catholics to fly beyond sea, and gave rise to those re-unions of disaffected exiles, which never ceased to endanger the throne of Elizabeth.

It cannot, as far as appears, be truly alleged that any greater provocation had as yet been given by the catholics than that of pertinaciously continuing to believe and worship as their fathers had done before them. I request those who may hesitate about this, to pay some attention to the order of time, before they form their opinions. The master mover, that became afterwards so busy, had not yet put his wires into action. Every prudent man at Rome (and we shall not at least deny that there were such) condemned the precipitate and insolent behaviour of Paul IV. towards Elizabeth, as they did most other parts of his administration. Pius IV., the successor of that injudicious old man, aware of the inestimable importance of reconciliation, and suspecting probably that the queen's turn of thinking did not exclude all hope of it, despatched a nuncio to England, with an invitation to send ambassadors to the council at Trent, and with powers, as is said, to confirm the English liturgy, and to permit double communion; one of the few conces-

sions which the more indulgent Romanists of that age were not very reluctant to make. But Elizabeth had taken her line as to the court of Rome; the nuncio received a message at Brussels, that he must not enter the kingdom; and she was too wise to countenance the impartial fathers of Trent, whose labours had nearly drawn to a close, and whose decisions on the controverted points it had never been very difficult to foretell. I have not found that Pius IV., more moderate than most other pontiffs of the sixteenth century, took any measures hostile to the temporal government of this realm: but the deprived ecclesiastics were not unfairly anxious to keep alive the faith of their former hearers, and to prevent them from sliding into conformity, through indifference and disuse of their ancient rites. The means taken were chiefly the same as had been adopted against themselves, the dispersion of small papers either in a serious or lively strain; but the remarkable position in which the queen was placed rendering her death a most important contingency, the popish party made use of pretended conjurations and prophecies of that event, in order to unsettle the people's minds, and to dispose them to anticipate another reaction. Partly through these political circumstances, but far more from the hard usage they experienced for professing their religion, there seems to have been an increasing restlessness among the catholics about 1562, which was met with new rigour by the parliament of that year.

§ 4. The act entitled, "for the assurance of the queen's royal power over all estates and subjects within her dominions," enacts, with an iniquitous and sanguinary retrospect, that all persons, who had ever taken holy orders or any degree in the universities, or had been admitted to the practice of the laws, or held any office in their execution, should be bound to take the oath of supremacy, when tendered to them by a bishop, or by commissioners appointed under the great seal. The penalty for the first refusal of this oath was that of a præmunire; but any person who, after the space of three months from the first tender, should again refuse it when in like manner tendered, incurred the pains of high treason. The oath of supremacy was imposed by the statute on every member of the House of Commons, but could not be tendered to a peer; the queen declaring her full confidence in those hereditary councillors. Several peers of great weight and dignity were still catholics.³

This harsh statute did not pass without opposition. Two speeches against it have been preserved; one by lord Montagu in the House of Lords, the other by Mr. Atkinson in the Commons, breathing such generous abhorrence of persecution as some erroneously imagine

to have been unknown to that age, because we rarely meet with it in theological writings.

I am never very willing to admit as an apology for unjust or cruel enactments, that they are not designed to be generally executed; a pretext often insidious, always insecure, and tending to mask the approaches of arbitrary government. But it is certain that Elizabeth did not wish this act to be enforced in its full severity. And archbishop Parker, by far the most prudent churchman of the time, judging some of the bishops too little moderate in their dealings with the papists, warned them privately to use great caution in tendering the oath of supremacy according to the act, and never to do so the second time, on which the penalty of treason might attach, without his previous approbation. The temper of some of his colleagues was more narrow and vindictive. Several of the deprived prelates had been detained in a sort of honourable custody in the palaces of their successors. Bonner, the most justly obnoxious of them all, was confined in the Marshalsea. Upon the occasion of this new statute, Horn, bishop of Winchester, indignant at the impunity of such a man, proceeded to tender him the oath of supremacy, with an evident intention of driving him to high treason. Bonner, however, instead of evading this attack, intrepidly denied the offer to be a lawful bishop; and, strange as it may seem, not only escaped all further molestation, but had the pleasure of seeing his adversaries reduced to pass an act of parliament, declaring the present bishops to have been legally consecrated.

§ 5. It was not long after the act imposing such heavy penalties on catholic priests for refusing the oath of supremacy, that the emperor Ferdinand addressed two letters to Elizabeth, interceding for the adherents to that religion, both with respect to those new severities to which they might become liable by conscientiously declining that oath, and to the prohibition of the free exercise of their rites. He suggested that it might be reasonable to allow them the use of one church in every city. And he concluded with an expression, which might possibly be designed to intimate that his own conduct towards the protestants in his dominions would be influenced by her concurrence in his request. Such considerations were not without great importance. The protestant religion was gaining ground in Austria, where a large proportion of the nobility as well as citizens had for some years earnestly claimed its public toleration. Ferdinand, prudent and averse from bigoted counsels, and for every reason solicitous to heal the wounds which religious differences had made in the empire, while he was endeavouring, not absolutely without hope of success, to obtain some concessions from the pope, had shown a disposition to grant further indulgences to his protestant subjects. His son Maximilian, not only through his

moderate temper, but some real inclination towards the new doctrine, bade fair to carry much further the liberal policy of the reigning emperor. It was consulting very little the general interests of protestantism, to disgust persons so capable and so well disposed to befriend it. But our queen, although free from the fanatical spirit of persecution which actuated part of her subjects, was too deeply imbued with arbitrary principles to endure any public deviation from the mode of worship she should prescribe. In her answer to Ferdinand, the queen declares that she cannot grant churches to those who disagree from her religion, being against the laws of her parliament, and highly dangerous to the state of her kingdom; as it would sow various opinions in the nation to distract the minds of honest men, and would cherish parties and factions that might disturb the present tranquillity of the commonwealth.

§ 6. Camden and many others have asserted that by systematic connivance the Roman Catholics enjoyed a pretty free use of their religion for the first fourteen years of Elizabeth's reign. But this is not reconcilable to many passages in Strype's collections. We find abundance of persons harassed for recusancy, that is, for not attending the protestant church, and driven to insincere promises of conformity. Others were dragged before ecclesiastical commissioners for harbouring priests, or for sending money to those who had fled beyond sea. Students of the inns of court, where popery had a strong hold at this time, were examined in the star-chamber as to their religion, and on not giving satisfactory answers were committed to the Fleet. The catholic party were not always scrupulous about the usual artifices of an oppressed people, meeting force by fraud, and concealing their heart-felt wishes under the mask of ready submission, or even of zealous attachment. A great majority both of clergy and laity yielded to the times; and of these temporising conformists it cannot be doubted that many lost by degrees all thought of returning to their ancient fold. But others, while they complied with exterior ceremonies, retained in their private devotions their accustomed mode of worship. It is an admitted fact, that the catholics generally attended the church, till it came to be reckoned a distinctive sign of their having renounced their own religion. They persuaded themselves (and the English priests, uninstructed and accustomed to a temporising conduct, did not discourage the notion) that the private observance of their own rites would excuse a formal obedience to the civil power. The Romish scheme of worship, though it attaches more importance to ceremonial rites, has one remarkable difference from the protestant, that it is far less social; and consequently the prevention of its open exercise has far less tendency to weaken men's religious associations, so long as their

individual intercourse with a priest, its essential requisite, can be preserved. Priests therefore travelled the country in various disguises, to keep alive a flame which the practice of outward conformity was calculated to extinguish. There was not a county throughout England, says a catholic historian, where several of Mary's clergy did not reside, commonly called the old priests. They served as chaplains in private families. By stealth, at the dead of night, in private chambers, in the secret lurking-places of an ill-peopled country, with all the mystery that subdues the imagination, with all the mutual trust that invigorates constancy, these proscribed ecclesiastics celebrated their solemn rites, more impressive in such concealment than if surrounded by all their former splendour. The strong predilection indeed of mankind for mystery, which has probably led many to tamper in political conspiracies without much further motive, will suffice to preserve secret associations, even where their purposes are far less interesting than those of religion. Many of these itinerant priests assumed the character of protestant preachers; and it has been said, with some truth, though not probably without exaggeration, that, under the directions of their crafty court, they fomented the division then springing up, and mingled with the anabaptists and other sectaries, in the hope both of exciting dislike to the establishment, and of instilling their own tenets, slightly disguised, into the minds of unwary enthusiasts.

§ 7. It is my thorough conviction that the persecution, for it can obtain no better name, carried on against the English catholics, however it might serve to delude the government by producing an apparent conformity, could not but excite a spirit of disloyalty in many adherents of that faith. Nor would it be safe to assert that a more conciliating policy would have altogether disarmed their hostility, much less laid at rest those busy hopes of the future, which the peculiar circumstances of Elizabeth's reign had a tendency to produce. This remarkable posture of affairs affected all her civil, and still more her ecclesiastical policy. Her own title to the crown depended absolutely on a parliamentary recognition. The act of 35 H. 8, c. 1, had settled the crown upon her, and thus far restrained the previous statute, 28 H. 8, c. 7, which had empowered her father to regulate the succession at his pleasure. Besides this legislative authority, his testament had bequeathed the kingdom to Elizabeth after her sister Mary; and the common consent of the nation had ratified her possession. But the queen of Scots, niece of Henry by Margaret, his elder sister, had a prior right to the throne during Elizabeth's life, in the eyes of such catholics as preferred an hereditary to a parliamentary title, and was reckoned by the far greater part of the nation its presumptive heir after her decease. There could indeed

be no question of this, had the succession been left to its natural course. But Henry had exercised the power with which his parliament, in too servile a spirit, yet in the plenitude of its sovereign authority, had invested him, by settling the succession in remainder upon the house of Suffolk, descendants of his second sister Mary, to whom he postponed the elder line of Scotland. Mary left two daughters, Frances and Eleanor. The former became wife of Grey, marquis of Dorset, created duke of Suffolk by Edward; and had three daughters—Jane, whose fate is well known, Catherine and Mary. Eleanor Brandon, by her union with the earl of Cumberland, had a daughter, who married the earl of Derby. At the beginning of Elizabeth's reign, or rather after the death of the duchess of Suffolk, lady Catherine Grey was by statute law the presumptive heiress of the crown; but according to the rules of hereditary descent, which the bulk of mankind do not readily permit an arbitrary and capricious enactment to disturb, Mary queen of Scots, grand-daughter of Margaret, was the indisputable representative of her royal progenitors, and the next in succession to Elizabeth.

§ 8. This reversion, indeed, after a youthful princess, might well appear rather an improbable contingency. It was to be expected that a fertile marriage would defeat all speculations about her inheritance; nor had Elizabeth been many weeks on the throne, before this began to occupy her subjects' minds. Among several who were named, two very soon became the prominent candidates for her favour, the archduke Charles, son of the emperor Ferdinand, and lord Robert Dudley, some time after created earl of Leicester; one recommended by his dignity and alliances, the other by her own evident partiality. She gave at the outset so little encouragement to the former proposal, that Leicester's ambition did not appear extravagant. But her ablest councillors, who knew his vices, and her greatest peers, who thought his nobility recent and ill acquired, deprecated so unworthy a connection. Few will pretend to explore the labyrinth of Elizabeth's heart; yet we may almost conclude that her passion for this favourite kept up a struggle against her wisdom for the first seven or eight years of her reign. Meantime she still continued unmarried; and those expressions she had so early used, of her resolution to live and die a virgin, began to appear less like coy affectation than at first. Never had a sovereign's marriage been more desirable for a kingdom. Cecil, aware how important it was that the queen should marry, but dreading her union with Leicester, contrived, about the end of 1564, to renew the treaty with the archduke Charles. During this negotiation, which lasted from two to three years, she showed not a little of that evasive and dissembling coquetry which was to be more fully displayed on subsequent occasions. Leicester desired

himself so much interested as to quarrel with those who manifested any zeal for the Austrian marriage; but his mistress gradually overcame her misplaced inclinations; and from the time when that connection was broken off, his prospects of becoming her husband seem rapidly to have vanished away. The pretext made for relinquishing this treaty with the archduke was Elizabeth's constant refusal to tolerate the exercise of his religion; a difficulty which, whether real or ostensible, recurred in all her subsequent negotiations of a similar nature.

In every parliament of Elizabeth the house of commons was zealously attached to the protestant interest. This, as well as an apprehension of disturbance from a contested succession, led to those importunate solicitations that she would choose a husband, which she so artfully evaded. Though the queen's marriage were the primary object of these addresses, as the most probable means of securing an undisputed heir to the crown, yet she might have satisfied the parliament in some degree by limiting the succession to one certain line. But it seems doubtful whether this would have answered the proposed end. If she had taken a firm resolution against matrimony, it might be less dangerous to leave the course of events to regulate her inheritance. Though all parties seem to have conspired in pressing her to some decisive settlement on this subject, it would not have been easy to content the two factions, who looked for a successor to very different quarters. It is evident that any confirmation of the Suffolk title would have been regarded by the queen of Scots and her numerous partisans as a flagrant injustice, to which they would not submit but by compulsion; and on the other hand, by re-establishing the hereditary line, Elizabeth would have lost her check on one whom she had reason to consider as a rival and competitor, and whose influence was already alarmingly extensive among her subjects.

§ 9. She had, however, in one of the first years of her reign, without any better motive than her own jealous and malignant humour, taken a step not only harsh and arbitrary, but very little consonant to policy, which had almost put it out of her power to defeat the queen of Scots' succession. Lady Catherine Grey, who has been already mentioned as next in remainder of the house of Suffolk, proved with child by a private marriage, as they both alleged, with the earl of Hertford. The queen, always envious of the happiness of lovers, and jealous of all who could entertain any hopes of the succession, threw them both into the Tower. By connivance of their keepers, the lady bore a second child during this imprisonment. Upon this, Elizabeth caused an inquiry to be instituted before a commission of privy counsellors and civilians; wherein, the parties being unable to adduce proof of their marriage, archbishop

Parker pronounced that their cohabitation was illegal, and that they should be censured for fornication. He was to be pitied if the law obliged him to utter so harsh a sentence, or to be blamed if it did not. Even had the marriage never been solemnized, it was impossible to doubt the existence of a contract, which both were still desirous to perform. But there is reason to believe that there had been an actual marriage, though so hasty and clandestine that they had not taken precautions to secure evidence of it. The injured lady sank under this hardship and indignity; but the legitimacy of her children was acknowledged by general consent, and, in a distant age, by a legislative declaration. These proceedings excited much dissatisfaction; generous minds revolted from their severity, and many lamented to see the reformed branch of the royal stock thus bruised by the queen's unkind and impolitic jealousy. Hales, clerk of the hanaper, a zealous protestant, having written in favour of lady Catherine's marriage, and of her title to the succession, was sent to the Tower. The lord keeper, Bacon himself, a known friend to the house of Suffolk, being suspected of having prompted Hales to write this treatise, lost much of his mistress's favour. Even Cecil, though he had taken a share in prosecuting lady Catherine, perhaps in some degree from an apprehension that the queen might remember he had once joined in proclaiming her sister Jane, did not always escape the same suspicion; and it is probable that he felt the imprudence of entirely discountenancing a party from which the queen and religion had nothing to dread. There is reason to believe that the house of Suffolk was favoured in parliament; the address of the commons in 1563, imploring the queen to settle the succession, contains several indications of a spirit unfriendly to the Scottish line; and a speech is extant, said to have been made as late as 1571, expressly vindicating the rival pretension. If indeed we consider with attention the statute of 13 Eliz. c. 1, which renders it treasonable to deny that the sovereigns of this kingdom, with consent of parliament, might alter the line of succession, it will appear little short of a confirmation of that title which the descendants of Mary Brandon derived from a parliamentary settlement. But the doubtful birth of lord Beauchamp and his brother, as well as an ignoble marriage, which Frances, the younger sister of lady Catherine Grey, had thought it prudent to contract, deprived this party of all political consequence much sooner, as I conceive, than the wisest of Elizabeth's advisers could have desired; and gave rise to various other pretensions, which failed not to occupy speculative or intriguing tempers throughout this reign.

§ 10 We may well avoid the tedious and intricate paths of Scottish history, where each fact must be sustained by a controversial dis-

cussion. Every one will recollect that Mary Stuart's retention of the arms and style of England gave the first, and, as it proved, inexpiable provocation to Elizabeth. The English queen took revenge by intriguing with all the malecontents of Scotland. But while she was endeavouring to render Mary's throne uncomfortable and insecure, she did not employ that influence against her in England, which lay more fairly in her power. She certainly was not unfavourable to the queen of Scots' succession, however she might decline compliance with importunate and injudicious solicitations to declare it. She threw both Hales and one Thornton into prison for writing against that title.

The circumstances wherein Mary found herself placed on her arrival in Scotland were sufficiently embarrassing to divert her attention from any regular scheme against Elizabeth, though she may sometimes have indulged visionary hopes; nor is it probable that, with the most circumspect management, she could so far have mitigated the rancour of some, or checked the ambition of others, as to find leisure for hostile intrigues. But her imprudent marriage with Darnley, and the far greater errors of her subsequent behaviour, by lowering both her resources and reputation as far as possible, seemed to be pledges of perfect security from that quarter. Yet it was precisely when Mary was become most feeble and helpless that Elizabeth's apprehensions grew most serious and well-founded.

At the time when Mary, escaped from captivity, threw herself on the protection of a related, though rival queen, three courses lay open to Elizabeth, and were discussed in her councils. To restore her by force of arms, or rather, by a mediation which would certainly have been effectual, to the throne which she had compulsorily abdicated, was the most generous, and would perhaps have turned out the most judicious, proceeding. Reigning thus with tarnished honour and diminished power, she must have continually depended on the support of England, and become little better than a vassal of its sovereign. Still it might be objected by many, that the queen's honour was concerned not to maintain too decidedly the cause of one accused by common fame, and even by evidence that had already been made public, of adultery and the assassination of her husband. To have permitted her retreat into France would have shown an impartial neutrality; and probably that court was too much occupied at home to have afforded her any material assistance. Yet this appeared rather dangerous; and policy was supposed, as frequently happens, to indicate a measure absolutely repugnant to justice, that of detaining her in perpetual custody. Whether this policy had no other fault than its want of justice may reasonably be called in question.

§ 11. The queen's determination neither to marry nor limit the succession had inevitably turned every one's thoughts towards the

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Seots a notorious adulteress and murderer, would have compassed a union with her at the hazard of his sovereign's crown, of the tranquillity and even independence of his country, and of the reformed religion. There is abundant proof of his intrigues with the duke of Alva, who had engaged to invade the kingdom. His trial was not indeed conducted in a manner that we can approve (such was the nature of state proceedings in that age); nor can it, I think, be denied that it formed a precedent of constructive treason not easily reconcileable with the statute; but much evidence is extant that his prosecutors did not adduce, and no one fell by a sentence more amply merited, or the execution of which was more indispensable.

Norfolk was the dupe throughout all this intrigue of more artful men: first of Murray and Lettlington, who had filled his mind with ambitious hopes, and afterwards of Italian agents employed by Pius V. to procure a combination of the catholic party. Collateral to Norfolk's conspiracy, but doubtless connected with it, was that of the northern earls of Northumberland and Westmoreland, long prepared, and perfectly foreseen by the government, of which the ostensible and manifest aim was the re-establishment of popery. Pius V., who took a far more active part than his predecessor in English affairs, and had secretly instigated this insurrection, now published his celebrated bull, excommunicating and deposing Elizabeth, in order to second the efforts of her rebellious subjects. This is, perhaps, with the exception of that issued by Sixtus V. against Henry IV. of France, the latest blast of that trumpet which had thrilled the hearts of monarchs. Yet there was nothing in the sound that bespoke declining vigour; even the illegitimacy of Elizabeth's birth is scarcely alluded to; and the pope seems to have chosen rather to tread the path of his predecessors, and absolve her subjects from their allegiance, as the just and necessary punishment of her heresy.

§ 12. The bull of Pius V., far more injurious in its consequences to those it was designed to serve than to Elizabeth, forms a leading epoch in the history of our English catholics. It rested upon a principle never universally acknowledged, and regarded with much jealousy by temporal governments, yet maintained in all countries by many whose zeal and ability rendered them formidable,—the right vested in the supreme pontiff to depose kings for heinous crimes against the church. One Felton affixed this bull to the gates of the bishop of London's palace, and suffered death for the offence. So audacious a manifestation of disloyalty was imputed with little justice to the catholics at large, but might more reasonably lie at the door of those active instruments of Rome, the English refugee priests and jesuits dispersed over Flanders, and lately established at Douay, who were continually passing into the kingdom, not only to keep

alive the precarious faith of the laity, but, as was generally surmised, to excite them against their sovereign. This produced the act of 13 Eliz. c. 2; which, after reciting these mischiefs, enacts that all persons publishing any bull from Rome, or absolving and reconciling any one to the Romish church, or being so reconciled, should incur the penalties of high treason; and such as brought into the realm any crosses, pictures, or superstitious things consecrated by the pope or under his authority, should be liable to a præmunire. Those who should conceal or connive at the offenders were to be held guilty of misprision of treason. This statute exposed the catholic priesthood, and in great measure the laity, to the continual risk of martyrdom; for so many had fallen away from their faith through a pliant spirit of conformity with the times, that the regular discipline would exact their absolution and reconciliation before they could be reinstated in the church's communion. Another act of the same session, manifestly levelled against the partisans of Mary, and even against herself, makes it high treason to affirm that the queen ought not to enjoy the crown, but some other person; or to publish that she is a heretic, schismatic, tyrant, infidel, or usurper of the crown; or to claim right to the crown, or to usurp the same during the queen's life; or to affirm that the laws and statutes do not bind the right of the crown, and the descent, limitation, inheritance, or governance thereof. And whosoever should, during the queen's life, by any book or work written or printed, expressly affirm, before the same had been established by parliament, that any one particular person was or ought to be heir and successor to the queen, except the same be the natural issue of her body, or should print or utter any such book or writing, was for the first offence to be imprisoned a year, and to forfeit half his goods; and for the second to incur the penalties of a præmunire.

It is impossible to misunderstand the chief aim of this statute. But the house of commons, in which the zealous protestants, or, as they were now rather denominated, puritans, had a predominant influence, were not content with these demonstrations against the unfortunate captive. Fear, as often happens, excited a sanguinary spirit amongst them; they addressed the queen upon what they called the great cause, that is, the business of the queen of Scots, presenting by their committee reasons gathered out of the civil law to prove that "it standeth not only with justice, but also with the queen's majesty's honour and safety, to proceed criminally against the pretended Scottish queen." Elizabeth, who could not really dislike these symptoms of hatred towards her rival, took the opportunity of simulating more humanity than the commons; and when they sent a bill to the upper house attainting Mary of treason, checked its course by proroguing the parliament. I do not think it admits of

above suspicion. For the same reason I hesitate to admit his alleged declarations at the place of execution, where, as well as at his trial, he is represented to have expressly acknowledged Elizabeth, and to have prayed for her as his queen *de facto* and *de jure*. For this was one of the questions propounded to him before his trial, which he refused to answer, in such a manner as betrayed his way of thinking. Most of those interrogated at the same time, on being pressed whether the queen was their lawful sovereign, whom they were bound to obey, notwithstanding any sentence of deprivation that the pope might pronounce, endeavoured, like Campian, to evade the snare. A few, who unequivocally disclaimed the deposing power of the Roman see, were pardoned. It is more honourable to Campian's memory that we should reject these pretended declarations than imagine him to have made them at the expense of his consistency and integrity. For the pope's right to deprive kings of their crowns was in that age the common creed of the jesuits, to whose order Campian belonged; and the Continent was full of writings published by the English exiles, by Sanders, Bristow, Persons, and Allen, against Elizabeth's unlawful usurpation of the throne. But many availed themselves of what was called an explanation of the bull of Pius V., given by his successor Gregory XIII., namely, that the bull should be considered as always in force against Elizabeth and the heretics, but should only be binding on catholics when due execution of it could be had. This was designed to satisfy the consciences of some papists in submitting to her government, and taking the oath of allegiance. But in thus granting a permission to dissemble, in hope of better opportunity for revolt, this interpretation was not likely to tranquillize her council, or conciliate them towards the Romish party. The distinction, however, between a king by possession and one by right was neither heard for the first nor for the last time in the reign of Elizabeth. It is the lot of every government that is not founded on the popular opinion of legitimacy to receive only a precarious allegiance. Subject to this reservation, which was pretty generally known, it does not appear that the priests or other Roman catholics, examined at various times during this reign, are more chargeable with insincerity or dissimulation than accused persons generally are.

The public executions, numerous as they were, scarcely form the most odious part of this persecution. The common law of England has always abhorred the accursed mysteries of a prison-house, and neither admits of torture to extort confession, nor of any penal infliction not warranted by a judicial sentence. But this law though still sacred in the courts of justice, was set aside by the privy council under the Tudor line. The rack seldom stood idle in the Tower for all the latter part of Elizabeth's reign.

of England in a disguised suit, to the intent to make special preparation of treason, was never so racked but that he was perfectly able to walk and to write, and did presently write and subscribe all his confessions. The queen's servants, the warders, whose office and act it is to handle the rack, were ever by those that attended the examinations specially charged to use it in so charitable a manner as such a thing might be. None of those who were at any time put to the rack," he proceeds to assert, "were asked, during their torture, any question as to points of doctrine, but merely concerning their plots and conspiracies, and the persons with whom they had had dealings, and what was their own opinion as to the pope's right to deprive the queen of her crown. Nor was any one so racked until it was rendered evidently probable, by former detections or confessions, that he was guilty; nor was the torture ever employed to wring out confessions at random; nor unless the party had first refused to declare the truth at the queen's commandment."

Such miserable excuses serve only to mingle contempt with our detestation. But it is due to Elizabeth to observe that she ordered the torture to be disused; and upon a subsequent occasion, the quartering of some concerned in Babington's conspiracy having been executed with unusual cruelty, gave directions that the rest should not be taken down from the gallows until they were dead.

§ 17. The strictness used with recusants, which much increased from 1579 or 1580, had the usual consequence of persecution, that of multiplying hypocrites. For, in fact, if men will once bring themselves to comply, to take all oaths, to practise all conformity, to oppose simulation and dissimulation to arbitrary inquiries, it is hardly possible that any government should not be baffled. Fraud becomes an over-match for power. The real danger meanwhile, the internal disaffection, remains as before or is aggravated. The laws enacted against popery were precisely calculated to produce this result. The oath of supremacy was not refused, the worship of the church was frequented by multitudes who secretly repined for a change; and the council, whose fear of open enmity had prompted their first severities, were led on by the fear of dissembled resentment to devise yet further measures of the same kind. Hence, in 1584 a law was enacted, enjoining all jesuits, seminary priests, and other priests, whether ordained within or without the kingdom, to depart from it within forty days, on pain of being adjudged traitors. The penalty of fine and imprisonment at the queen's pleasure was inflicted on such as, knowing any priest to be within the realm, should not discover it to a magistrate. This seemed to fill up the measure of persecution, and to render the longer preservation of this noxious religion absolutely impracticable. A general inquisition seems to have been made about this time; but whether it was founded on sufficient grounds of previous suspicion we cannot absolutely determine. The earl of Northumberland, brother of that

who had been executed for the rebellion of 1570, and the earl of Arundel, son of the unfortunate duke of Norfolk, were committed to the Tower, where the former put an end to his own life (for we cannot charge the government with an unproved murder); and the second, after being condemned for a traitorous correspondence with the queen's enemies, died in that custody. But whether or no some conspiracies (I mean more active than usual, for there was one perpetual conspiracy of Rome and Spain during most of the queen's reign) had preceded these severe and unfair methods by which her ministry counteracted them, it was not long before schemes more formidable than ever were put in action against her life. As the whole body of catholics was irritated and alarmed by the laws of proscription against their clergy, and by the heavy penalties on recusancy, which, as they alleged, showed a manifest purpose to reduce them to poverty; so some desperate men saw no surer means to rescue their cause than the queen's assassination. One Somerville, half a lunatic, and Parry, a man who, long employed as a spy upon the papists, had learned to serve with sincerity those he was sent to betray, were the first who suffered death for unconnected plots against Elizabeth's life. More deep-laid machinations were carried on by several catholic laymen at home and abroad, among whom a brother of lord Paget was the most prominent. These had in view two objects, the deliverance of Mary and the death of her enemy. Some perhaps who were engaged in the former project did not give countenance to the latter. But few, if any, ministers have been better served by their spies than Cecil and Walsingham. It is surprising to see how every letter seems to have been intercepted, every thread of these conspiracies unravelled, every secret revealed to these wise councillors of the queen. They saw that, while one lived whom so many deemed the presumptive heir, and from whose succession they anticipated, at least in possibility, an entire reversal of all that had been wrought for thirty years, the queen was as a mark for the pistol or dagger of every zealot. And fortunate, no question, they thought it, that the detection of Babington's conspiracy enabled them with truth, or a semblance of truth, to impute a participation in that crime to the most dangerous enemy whom, for their mistress, their religion, or themselves, they had to apprehend.

§ 18. Mary had now consumed the best years of her life in custody, and, though still the perpetual object of the queen's vigilance, had perhaps gradually become somewhat less formidable to the protestant interest. Whether she would have ascended the throne if Elizabeth had died during the latter years of her imprisonment must appear very doubtful when we consider the increasing strength of the puritans, the antipathy of the nation to

Spain, the prevailing opinion of her consent to Darnley's murder, and the obvious expedient of treating her son, now advancing to manhood, as the representative of her claim. The new projects imputed to her friends, even against the queen's life, exasperated the hatred of the protestants against Mary. An association was formed in 1584, the members of which bound themselves by oath,

"To withstand and pursue, as well by force of arms as by all other means of revenge, all manner of persons, of whatsoever state they shall be, and their abettors, that shall attempt any act, or counsel or consent to anything, that shall tend to the harm of her majesty's royal person; and never to desist from all manner of forcible pursuit against such persons, to the utter extirpation of them, their counsellors, aidors, and abettors. And if any such wicked attempt against her most royal person shall be taken in hand or procured, whereby any that have, may, or shall pretend title to come to this crown by the untimely death of her majesty so wickedly procured (which God of his mercy forbid), that the same may be avenged, we do not only bind ourselves both jointly and severally never to allow, accept, or favour any such pretended successor, by whom or for whom any such detestable act shall be attempted or committed, as unworthy of all government in any Christian realm or civil state, but do also further vow and promise, as we are most bound, and that in the presence of the eternal and everlasting God, *to prosecute such person or persons to death with our joint and particular forces, and to act the utmost revenge upon them that by any means we or any of us can devise and do, or cause to be devised and done, for their utter overthrow and extirpation.*"

The pledge given by this voluntary association received the sanction of parliament in an act "for the security of the queen's person and continuance of the realm in peace." This statute enacts, that if any invasion or rebellion should be made by or for any person pretending title to the crown after her majesty's decease, or if anything be confessed or imagined tending to the hurt of her person, with the privity of any such person, a number of peers, privy councillors, and judges, to be commissioned by the queen, should examine and give judgment on such offences, and all circumstances relating thereto; after which judgment all persons against whom it should be published should be disabled for ever to make any such claim.⁵ I omit some further provisions to the same effect for the sake of brevity. But we may remark that this statute differs from the associators' engagement in omitting the outrageous threat of pursuing to death any person, whether privy or not to the design, on whose behalf an attempt against the queen's life should be made. The main intention of the statute was to procure, in the event of any rebellious movements, what the queen's councillors had long ardently desired to obtain from her, an absolute

exclusion of Mary from the succession. But if the scheme of assassination devised by some of her desperate partisans had taken effect, however questionable might be her concern in it, I have little doubt that the rage of the nation would, with or without some process of law, have instantly avenged it in her blood. This was, in the language of parliament, their great cause; an expression which, though it may have an ultimate reference to the general interest of religion, is never applied, so far as I remember, but to the punishment of Mary, which they had demanded in 1572, and now clamoured for in 1586. The addresses of both houses to the queen to carry the sentence passed by the commissioners into effect, her evasive answers and feigned reluctance, as well as the strange scenes of hypoerisy which she acted afterwards, are well-known matters of history upon which it is unnecessary to dwell. No one will be found to excuse the hollow affectation of Elizabeth; but the famous sentence that brought Mary to the scaffold, though it has certainly left in popular opinion a darker stain on the queen's memory than any other transaction of her life, if not capable of complete vindication has at least encountered a disproportioned censure.

It is of course essential to any kind of apology for Elizabeth in this matter that Mary should have been assenting to a conspiracy against her life. For it could be no real crime to endeavour at her own deliverance; nor, under the circumstances of so long and so unjust a detention, would even a conspiracy against the aggressor's power afford a moral justification for her death. But though the proceedings against her are by no means exempt from the shameful breach of legal rules almost universal in trials for high treason during that reign (the witnesses not having been examined in open court), yet the depositions of her two secretaries, joined to the confessions of Babington and other conspirators, form a body of evidence, not indeed irresistibly convincing, but far stronger than we find in many instances where condemnation has ensued. And Hume has alleged sufficient reasons for believing its truth, derived from the great probability of her concurring in any scheme against her oppressor, from the certainty of her long correspondence with the conspirators (who, I may add, had not made any difficulty of hinting to her their designs against the queen's life), and from the deep guilt that the falsehood of the charge must inevitably attach to Sir Francis Walsingham. Those at least who cannot acquit the queen of Scots of her husband's murder, will hardly imagine that she would scruple to concur in a crime so much more capable of extenuation, and so much more essential to her interests. But as the proofs are not perhaps complete, we must hypothetically assume her guilt, in order to set this famous problem in the casuistry of public law upon its proper footing.

It has been said so often that few perhaps wait to reflect whether it has been said with reason that Mary, as an independent sovereign, was not amenable to any English jurisdiction. This, however, does not appear unquestionable. By one of those principles of law which may be called natural, as forming the basis of a just and rational jurisprudence, every independent government is supreme within its own territory. Strangers, voluntarily resident within a state, owe a temporary allegiance to its sovereign, and are amenable to the jurisdiction of its tribunals; and this principle, which is perfectly conformable to natural law, has been extended by positive usage even to those who are detained in it by force. It is certainly true that an exception to this rule, incorporated with the positive law of nations, and established no doubt before the age of Elizabeth, has rendered the ambassadors of sovereign princes exempt, in all ordinary cases at least, from criminal process. Whether, however, an ambassador may not be brought to punishment for such a flagrant abuse of the confidence which is implied by receiving him, as a conspiracy against the life itself of the prince at whose court he resides, has been doubted by those writers who are most inclined to respect the privileges with which courtesy and convenience have invested him. A sovereign, during a temporary residence in the territories of another, must of course possess as extensive an immunity as his representative; but that he might, in such circumstances, frame plots for the prince's assassination with impunity, seems to take for granted some principle that I do not understand.

But whatever be the privilege of inviolability attached to sovereigns, it must, on every rational ground, be confined to those who enjoy and exercise dominion in some independent territory. An abdicated or dethroned monarch may preserve his title by the courtesy of other states, but cannot rank with sovereigns in the tribunals where public law is administered. I should be rather surprised to hear any one assert that the parliament of Paris was incompetent to try Christina for the murder of Monaldeschi. And, though we must admit that Mary's resignation of her crown was compulsory, and retracted on the first occasion; yet, after a twenty-years' loss of possession, when not one of her former subjects avowed allegiance to her, when the king of Scotland had been so long acknowledged by England and by all Europe, is it possible to consider her as more than a titular queen, divested of every substantial right to which a sovereign tribunal could have regard? She was styled accordingly, in the indictment, "Mary, daughter and heir of James the Fifth, late king of Scots, otherwise called Mary queen of Scots, dowager of France." We read even that some lawyers would have had her tried by a jury of the county of Stafford, rather than by the special commission; which Elizabeth noticed as a strange

indignity. The commission, however, was perfectly legal under the recent statute.

But while we can hardly pronounce Mary's execution to have been so wholly iniquitous and unwarrantable as it has been represented, it may be admitted that a more generous nature than that of Elizabeth would not have exacted the law's full penalty. The queen of Scots' detention in England was in violation of all natural, public, and municipal law; and if reasons of state policy or precedents from the custom of princes are allowed to extenuate this injustice, it is to be asked whether such reasons and such precedents might not palliate the crime of assassination imputed to her. Some might perhaps allege, as was so frequently urged at the time, that, if her life could be taken with justice, it could not be spared in prudence; and that Elizabeth's higher duty to preserve her people from the risks of civil commotion must silence every feeling that could plead for mercy. Of this necessity different judgments may perhaps be formed. It is evident that Mary's death extinguished the best hope of popery in England: but the relative force of the two religions was greatly changed since Norfolk's conspiracy; and it appears to me that an act of parliament explicitly cutting her off from the crown, and at the same time entailing it on her son, would have afforded a very reasonable prospect of securing the succession against all serious disturbance. But this neither suited the inclination of Elizabeth nor of some among those who surrounded her.

§ 19. As the catholics endured without any open murmuring the execution of her on whom their fond hopes had so long rested, so for the remainder of the queen's reign they by no means appear, when considered as a body, to have furnished any specious pretexts for severity. In that memorable year, when the dark cloud gathered around our coasts, when Europe stood by in fearful suspense to behold what should be the result of that great cast in the game of human politics, what the craft of Rome, the power of Philip, the genius of Farnese, could achieve against the island-queen with her Drakes and Cecils,—in that agony of the protestant faith and English name, they stood the trial of their spirit: without swerving from their allegiance. It was then that the catholics in every county repaired to the standard of the lord-lieutenant, imploring that they might not be suspected of bartering the national independence for their religion itself. It was then that the venerable lord Montague brought a troop of horse to the queen at Tilbury, commanded by himself, his son, and grandson. It would have been a sign of gratitude if the laws depriving them of the free exercise of their religion had been, if not repealed, yet suffered to sleep, after these proofs of loyalty. But the execution of priests and of other

catholics became on the contrary more frequent, and the fines for recusancy were exacted as rigorously as before. A statute was enacted, restraining popish recusants; a distinctive name now first imposed by law, to particular places of residence, and subjecting them to other vexatious provisions. All persons were forbidden by proclamation to harbour any of whose conformity they were not assured. Some indulgence was doubtless shown during all Elizabeth's reign to particular persons, and it was not unusual to release priests from confinement; but such precarious and irregular connivance gave more scandal to the puritans than comfort to the opposite party.

§ 20. The catholic martyrs under Elizabeth amount to no inconsiderable number. Dodd reckons them at 191; Milner has raised the list to 204. Fifteen of these, according to him, suffered for denying the queen's supremacy, 126 for exercising their ministry, and the rest for being reconciled to the Romish church. Many others died of hardships in prison, and many were deprived of their property. There seems nevertheless to be good reason for doubting whether any one who was executed might not have saved his life by explicitly denying the pope's power to depose the queen. It was constantly maintained by her ministers that no one had been executed for his religion. This would be an odious and hypocritical subterfuge if it rested on the letter of these statutes, which adjudge the mere manifestation of a belief in the Roman catholic religion, under certain circumstances, to be an act of treason. But both lord Burleigh, in his Execution of Justice, and Walsingham, in a letter published by Burnet, positively assert the contrary; and I am not aware that their assertion has been disproved. This certainly furnishes a distinction between the persecution under Elizabeth (which, unjust as it was in its operation, yet, as far as it extended to capital inflictions, had in view the security of the government) and that which the protestants had sustained in her sister's reign, springing from mere bigotry and vindictive rancour, and not even shielding itself at the time with those shallow pretexts of policy which it has of late been attempted to set up in its extenuation. But that which renders these condemnations of popish priests so iniquitous is, that the belief in, or rather the refusal to disclaim, a speculative tenet, dangerous indeed, and incompatible with loyalty, but not coupled with any overt act, was construed into treason; nor can any one affect to justify these sentences who is not prepared to maintain that a refusal of the oath of abjuration, while the pretensions of the house of Stuart subsisted, might lawfully or justly have incurred the same penalty.

An apology was always deduced for these measures, whether of restriction or punishment, adopted against all adherents to the

Roman church, from the restless activity of that new militia which the Holy See had lately organised. The mendicant orders established in the thirteenth century had lent former popes a powerful aid towards subjecting both the laity and the secular priesthood, by their superior learning and ability, their emulous zeal, their systematic concert, their implicit obedience. But, in all these requisites for good and faithful janissaries of the church, they were far excelled by the new order of Ignatius Loyola. Rome, I believe, found in their services what has stayed her fall. They contributed in a very material degree to check the tide of the Reformation. Subtle alike and intrepid, pliant in their direction, unshaken in their aim, the sworn, implacable, unscrupulous enemies of protestant governments, the jesuits were a legitimate object of jealousy and restraint. As every member of that society enters into an engagement of absolute, unhesitating obedience to its superior, no one could justly complain that he was presumed capable at least of committing any crimes that the policy of his monarch might enjoin. But if the jesuits by their abilities and busy spirit of intrigue promoted the interests of Rome, they raised up enemies by the same means to themselves within the bosom of the church; and became little less obnoxious to the secular clergy, and to a great proportion of the laity, than to the protestants whom they were commissioned to oppose. Their intermeddling character was shown in the very prisons occupied by catholic recusants, where a schism broke out between the two parties, and the secular priests loudly complained of their usurping associates. This was manifestly connected with the great problem of allegiance to the queen, which the one side being always ready to pay, did not relish the sharp usage it endured on account of the other's disaffection. The council indeed gave some signs of attending to this distinction, by a proclamation issued in 1602, ordering all priests to depart from the kingdom, unless they should come in and acknowledge their allegiance, with whom the queen would take further order. Thirteen priests came forward on this, with a declaration of allegiance as full as could be devised. Some of the more violent papists blamed them for this; and the Louvain divines concurred in the censure. There were now two parties among the English catholics; and those who, goaded by the sense of long persecution, and inflamed by obstinate bigotry, regarded every heretical government as unlawful or unworthy of obedience, used every machination to deter the rest from giving any test of their loyalty. These were the more busy, but by much the less numerous class; and their influence was mainly derived from the laws of severity, which they had braved or endured with fortitude. It is equally candid and reasonable to believe that, if a fair and legal toleration, or even a general connivance at the exercise of their

NOTE TO CHAPTER III

THE OATH OF SUPREMACY (p. 60).

THE oath of supremacy was expressed as follows:—"I, A. B., do utterly testify and declare, that the queen's highness is the only supreme governor of this realm, and all other, her highness's dominions and countries, as well in all spiritual and ecclesiastical things or causes as temporal; and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm; and therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities, and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the queen's highness, her heirs and lawful successors, and to my power shall assist and defend all jurisdictions, pre-eminences, privileges, and authorities, granted or belonging to the queen's highness, her heirs and successors, or united and annexed to the imperial crown of this realm."

A remarkable passage in the injunctions to the ecclesiastical visitors of 1559, which may be reckoned in the nature of a contemporaneous exposition of the law, restrains the royal supremacy established by this act, and asserted in the above oath, in the following words: "Her majesty forbiddeth all manner her subjects to give ear or credit to such perverse and malicious persons, which most sinisterly and maliciously labour to notify to her loving subjects how by words of the said oath it may be collected that the kings or queens of this realm, possessors of the crown, may challenge authority and power of ministry of divine service in the church; wherein her said subjects be much abused by such evil disposed persons. For certainly her majesty neither doth, nor ever will, challenge any other authority than that was challenged and lately used by the said noble kings of famous memory, king Henry VIII. and king Edward VI. which was, and was of ancient time, due to the imperial crown of this realm; that is,

under God to have the sovereignty and rule over all manner of persons born within these her realms, dominions, and countries, of what estate, either ecclesiastical or temporal, soever they be, so as no other foreign power shall or ought to have any superiority over them. And if any person that hath conceived any other sense of the form of the said oath shall accept the same with this interpretation, sense or meaning, her majesty is well pleased to accept every such in that behalf, as her good and obedient subjects, and shall acquit them of all manner of penalties contained in the said act, against such as shall peremptorily or obstinately refuse to take the same oath." 1 Somers Tracts, edit. Scott, 73.

This interpretation was afterwards given in one of the thirty-nine articles, which having been confirmed by parliament, it is undoubtedly to be reckoned the true sense of the oath. Mr. Butler, in his *Memoirs of English Catholics*, vol. i. p. 157, enters into a discussion of the question, whether Roman Catholics might conscientiously take the oath of supremacy in this sense. It appears that in the seventeenth century some contended for the affirmative; and this seems to explain the fact that several persons of that persuasion, besides peers, from whom the oath was not exacted, did actually hold offices under the Stuarts, and even enter into parliament, and that the test act and declaration against transubstantiation were thus rendered necessary to make their exclusion certain.

As to the exposition before given of the oath of supremacy, I conceive that it was intended not only to relieve the scruples of Catholics, but of those who had imbibed from the school of Calvin an apprehension of what is sometimes, though rather improperly, called *Erastianism*,—the merging of all spiritual powers, even those of ordination and of preaching, in the paramount authority of the state, towards which the dogmatism of Henry, and obsequiousness of Cromwell, had seemed to bring the church of England.

CHAPTER IV.

S OF ELIZABETH'S REIGN RESPECTING
TESTANT NONCONFORMISTS.

ences among the English Protestants. § 2. Religious Inclinations
Unwillingness of many to comply with the established Cere-
mony enforced by the Archbishop. § 5. Separate conventicles.
ained Opposition, about 1570, led by Cartwright. Dangerous
ts. § 7. Puritans supported in the Commons. § 8. And in
the Council. § 9. Prophesyings. § 10. Archbishops Grindal
aduct of the latter in enforcing Conformity. § 11. High
Lord Burleigh averse to Severity. § 12. Puritan Libels. § 13.
Presbyterian System. § 14. House of Commons averse to
p. § 15. Independents liable to severe Laws. § 16. Hooker's
§ 17. Spoliation of Church Revenues.

tutes, enacted in the first year of Elizabeth,
the acts of supremacy and uniformity, are the
Anglican church with the temporal constitution,
subordination and dependency of the former;
; all jurisdiction and legislative power of eccle-
cept under the authority of the crown; and the
; all changes of rites and discipline without the
liament. It was the constant policy of this
her ecclesiastical prerogative and the laws she
in following up this principle she found herself
troubles, and had to contend with a religious
ite to the Romish, less dangerous indeed and
ernment, but full as vexatious and determined.
er place slightly mentioned the differences that
up under Edward VI. between the moderate re-
lished the new Anglican church, and those who
ceeding with too much forbearance in casting off
abuses.¹ These diversities of opinion were not
tion to those which distinguished the two great
antisim in Europe. Luther, intent on his own
eology, had shown much indifference about
or ceremonies, and had even favoured, especially
his preaching, that specious worship which some
ere eager to reduce to simplicity. Crucifixes and

images, tapers and priestly vestments, even for a time the elevation of the host and the Latin mass-book, continued in the Lutheran churches; while the disciples of Zuingli and Calvin were carefully cradicating them as popish idolatry and superstition. Cranmer and Ridley, the founders of the English Reformation, justly deeming themselves independent of any foreign master, adopted a middle course between the Lutheran and Calvinistic ritual. The general tendency however of protestants, even in the reign of Edward VI., was towards the simpler forms; whether through the influence of those foreign divines who co-operated in our Reformation, or because it was natural in the heat of religious animosity to recede as far as possible, especially in such exterior distinctions, from the opposite denomination. The death of Edward seems to have prevented a further approach to the scheme of Geneva in our ceremonies, and perhaps in our church-government. During the persecution of Mary's reign the most eminent protestant clergyman took refuge in various cities of Germany and Switzerland. They were received by the Calvinists with hospitality and fraternal kindness; while the Lutheran divines, a narrow-minded intolerant faction, both neglected and insulted them.² Divisions soon arose among themselves about the use of the English service, in which a pretty considerable party was disposed to make alterations. The chief scene of these disturbances was Frankfort, where Knox, the famous reformer of Scotland, headed the innovators; while Cox, an eminent divine, much concerned in the establishment of Edward VI., and afterwards bishop of Ely, stood up for the original liturgy. Cox succeeded (not quite fairly, if we may rely on the only narrative we possess) in driving his opponents from the city; but these disagreements were by no means healed when the accession of Elizabeth recalled both parties to their own country, neither of them very likely to display more mutual charity in their prosperous hour than they had been able to exercise in a common persecution.

§ 2. The first mortification these exiles endured on their return was to find a more dilatory advance towards public reformation of religion, and more of what they deemed lukewarmness, than their sanguine zeal had anticipated. Most part of this delay was owing to the greater prudence of the queen's councillors, who felt the pulse of the nation before they ventured on such essential changes. But there was yet another obstacle, on which the reformers had not reckoned. Elizabeth, though resolute against submitting to the papal supremacy, was not so averse to all the tenets abjured by protestants, and loved also a more splendid worship than had prevailed in her brother's reign; while many of those returned from the

CHAPTER IV.

ON THE LAWS OF ELIZABETH'S REIGN RESPECTING
PROTESTANT NONCONFORMISTS.

§ 1. Origin of the Differences among the English Protestants. § 2. Religious Inclinations of the Queen. § 3. Unwillingness of many to comply with the established Ceremonies. § 4. Conformity enforced by the Archbishop. § 5. Separate conventicles. § 6. A more determined Opposition, about 1570, led by Cartwright. Dangerous Nature of his Tenets. § 7. Puritans supported in the Commons. § 8. And in some measure by the Council. § 9. Propheysings. § 10. Archbishops Grindal and Whitgift. Conduct of the latter in enforcing Conformity. § 11. High Commission Court. Lord Burleigh averse to Severity. § 12. Puritan Libels. § 13. Attempt to set up Presbyterian System. § 14. House of Commons averse to Episcopal Authority. § 15. Independents liable to severe Laws. § 16. Hooker's Ecclesiastical Polity. § 17. Spoliation of Church Revenues.

§ 1. THE two statutes, enacted in the first year of Elizabeth, commonly called the acts of supremacy and uniformity, are the main links of the Anglican church with the temporal constitution, and establish the subordination and dependency of the former; the first abrogating all jurisdiction and legislative power of ecclesiastical rulers, except under the authority of the crown; and the second prohibiting all changes of rites and discipline without the approbation of parliament. It was the constant policy of this queen to maintain her ecclesiastical prerogative and the laws she had enacted. But in following up this principle she found herself involved in many troubles, and had to contend with a religious party quite opposite to the Romish, less dangerous indeed and inimical to her government, but full as vexatious and determined.

I have in another place slightly mentioned the differences that began to spring up under Edward VI. between the moderate reformers who established the new Anglican church, and those who accused them of proceeding with too much forbearance in casting off superstitions and abuses.¹ These diversities of opinion were not without some relation to those which distinguished the two great families of protestantism in Europe. Luther, intent on his own system of dogmatic theology, had shown much indifference about retrenching exterior ceremonies, and had even favoured, especially in the first years of his preaching, that specious worship which some ardent reformers were eager to reduce to simplicity. Crucifixes and

¹ See pp. 25, 26.

images, tapers and priestly vestments, even for a time the elevation of the host and the Latin mass-book, continued in the Lutheran churches; while the disciples of Zuingle and Calvin were carefully eradicating them as popish idolatry and superstition. Cranmer and Ridley, the founders of the English Reformation, justly deeming themselves independent of any foreign master, adopted a middle course between the Lutheran and Calvinistic ritual. The general tendency however of protestants, even in the reign of Edward VI., was towards the simpler forms; whether through the influence of those foreign divines who co-operated in our Reformation, or because it was natural in the heat of religious animosity to recede as far as possible, especially in such exterior distinctions, from the opposite denomination. The death of Edward seems to have prevented a further approach to the scheme of Geneva in our ceremonies, and perhaps in our church-government. During the persecution of Mary's reign the most eminent protestant clergyman took refuge in various cities of Germany and Switzerland. They were received by the Calvinists with hospitality and fraternal kindness; while the Lutheran divines, a narrow-minded intolerant faction, both neglected and insulted them.² Divisions soon arose among themselves about the use of the English service, in which a pretty considerable party was disposed to make alterations. The chief scene of these disturbances was Frankfort, where Knox, the famous reformer of Scotland, headed the innovators; while Cox, an eminent divine, much concerned in the establishment of Edward VI., and afterwards bishop of Ely, stood up for the original liturgy. Cox succeeded (not quite fairly, if we may rely on the only narrative we possess) in driving his opponents from the city; but these disagreements were by no means healed when the accession of Elizabeth recalled both parties to their own country, neither of them very likely to display more mutual charity in their prosperous hour than they had been able to exercise in a common persecution.

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the shape of an embodied faction, which concessions, it must be owned, are not apt to satisfy, but numbered the most learned and distinguished portion of the hierarchy. Parker stood nearly alone on the other side, but alone more than an equipoise in the balance, through his high station, his judgment in matters of policy, and his knowledge of the queen's disposition. He had possibly reason to apprehend that Elizabeth, irritated by the prevalent humour for alteration, might burst entirely away from the protestant side, or stretch her supremacy to reduce the church into a slavish subjection to her caprice.

§ 4. The unsettled state of exterior religion which has been mentioned lasted till 1565. In the beginning of that year a determination was taken by the queen, or rather perhaps the archbishop, to put a stop to all irregularities in the public service. He set forth a book called *Advertisements*, containing orders and regulations for the discipline of the clergy. This modest title was taken in consequence of the queen's withholding her sanction of its appearance, through Leicester's influence. The primate's next step was to summon before the ecclesiastical commission Sampson, dean of Christchurch, and Humphrey, president of Magdalen college, Oxford, men of signal nonconformity, but at the same time of such eminent reputation that, when the law took its course against them, no other offender could hope for indulgence. On refusing to wear the customary habits, Sampson was deprived of his deanery; but the other seems to have been tolerated. This instance of severity, as commonly happens, rather irritated than intimidated the puritan clergy, aware of their numbers, their popularity, and their powerful friends, but above all sustained by their own sincerity and earnestness. Parker had taken his resolution to proceed in the vigorous course he had begun. He obtained from the queen a proclamation, peremptorily requiring a conformity in the use of the clerical vestments and other matters of discipline. The London ministers, summoned before himself and their bishop Grindal, who did not very willingly co-operate with his metropolitan, were called upon for a promise to comply with the legal ceremonies, which thirty-seven out of ninety-eight refused to make. They were in consequence suspended from their ministry, and their livings put in sequestration. But these unfortunately, as was the case in all this reign, were the most conspicuous both for their general character and for their talent in preaching.²

§ 5. Whatever deviations from uniformity existed within the pale of the Anglican church, no attempt had hitherto been made to form separate assemblies; nor could it be deemed necessary while so

² Life of Parker, 314. Strype says, p. 223, that the suspended ministers preached again after a little liberty was given.

much indulgence had been conceded to the scrupulous clergy. But they were now reduced to determine whether the imposition of those rites they disliked would justify, or render necessary, an abandonment of their ministry. Several of the most respectable opponents of the ceremonies were adverse to any open schism. But the animosities springing from heated zeal, and the smart of what seemed oppression, would not suffer the English puritans generally to acquiesce in such temperate counsels. They began to form separate conventicles in London, not ostentatiously indeed, but of course without the possibility of eluding notice. It was doubtless worthy of much consideration whether an established church-government could wink at the systematic disregard of its discipline by those who were subject to its jurisdiction and partook of its revenues. But there are few, I trust, who can hesitate to admit that the puritan clergy, after being excluded from their benefices, might still claim from a just government a peaceful toleration of their particular worship. This it was vain to expect from the queen's arbitrary spirit, the imperious humour of Parker, and that total disregard of the rights of conscience which was common to all parties in the sixteenth century. The first instance of actual punishment inflicted on protestant dissenters was in June, 1567, when a company of more than one hundred were seized during their religious exercises at Plummer's Hall, which they had hired on pretence of a wedding, and fourteen or fifteen of them were sent to prison. They behaved on their examination with a rudeness, as well as self-sufficiency, that had already begun to characterise the puritan faction. But this cannot excuse the fatal error of molesting men for the exercise of their own religion.

These coercive proceedings of the archbishop were feebly seconded, or directly thwarted, by most leading men both in church and state. Grindal and Sandys, successively bishops of London and archbishops of York, were naturally reckoned at this time somewhat favourable to the nonconforming ministers, whose scruples they had partaken. Parkhurst and Pilkington, bishops of Norwich and Durham, were openly on their side. They had still more effectual support in the queen's council. The earl of Leicester, who possessed more power than any one to sway her wavering and capricious temper, the earls of Bedford, Huntingdon, and Warwick, regarded as the steadiest protestants among the aristocracy, the wise and grave lord keeper Bacon, the sagacious Walsingham, the experienced Sadler, the zealous Knollys, considered these objects of Parker's severity either as demanding a purer worship than had been established in the church, or at least as worthy by their virtues and services of more indulgent treatment. Cecil himself, though on intimate terms with the archbishop, and concurring generally in his mea-

submit their sceptres, to throw down their crowns before the church, yea, as the prophet speaketh, to lick the dust off the feet of the church."

It is difficult to believe that I am transcribing the words of a protestant writer; so much does this passage call to mind the tones of infatuated arrogance which had been heard from the lips of Gregory VII. and of those who trod in his footsteps.

The strength of the protestant party had been derived, both in Germany and in England, far less from their superiority in argument, however decisive this might be, than from that desire which all classes, and especially the higher, had long experienced to emancipate themselves from the thralldom of ecclesiastical jurisdiction. For it is ever found that the generality of mankind do not so much as give a hearing to novel systems in religion, till they have imbibed, from some cause or other, a secret distaste to that in which they have been educated. It was therefore rather alarming to such as had an acquaintance with ecclesiastical history, and knew the encroachments formerly made by the hierarchy throughout Europe, encroachments perfectly distinguishable from those of the Roman see, to perceive the same pretensions urged, and the same ambition and arrogance at work, which had imposed a yoke on the necks of their fathers. With whatever plausibility it might be maintained that a connexion with temporal magistrates could only corrupt the purity and shackle the liberties of a Christian church, this argument was not for them to urge who called on these magistrates to do the church's bidding, to enforce its decrees, to punish its refractory members; and while they disdained to accept the prince's co-operation as their ally, claimed his service as their minister. The protestant dissenters since the revolution, who have almost unanimously, and, I doubt not, sincerely, declared their averseness to any religious establishment, especially as accompanied with coercive power, even in favour of their own sect, are by no means chargeable with these errors of the early puritans. But the scope of Cartwright's declaration was not to obtain a toleration for dissent; not even, by abolishing the whole ecclesiastical polity, to place the different professions of religion on an equal footing; but to substitute his own model of government, the one, exclusive, unappealable standard of obedience, with all the endowments, so far as applicable to its frame, of the present church, and with all the support to its discipline that the civil power could afford.

We are not however to conclude that every one, or even the majority, of those who might be counted on the puritan side in Elizabeth's reign, would have subscribed to these extravagant assertions of Cartwright, or desired to take away the legal supremacy

of the crown. That party acquired strength by the prevailing hatred and dread of popery, and by the disgust which the bishops had been unfortunate enough to excite. If the language which I have quoted from the puritans breathed a spirit of ecclesiastical usurpation that might one day become dangerous, many were of opinion that a spirit not less mischievous in the present hierarchy, under the mask of the queen's authority, was actually manifesting itself in deeds of oppression. The upper ranks among the laity, setting aside courtiers, and such as took little interest in the dispute, were chiefly divided between those attached to the ancient church and those who wished for further alterations in the new. I conceive the church of England party, that is the party adverse to any species of ecclesiastical change, to have been the least numerous of the three during this reign; still excepting, as I have said, the neutrals, who commonly make a numerical majority, and are counted along with the dominant religion. But by the act of the fifth of Elizabeth, Roman catholics were excluded from the house of commons; or, if some that way affected might occasionally creep into it, yet the terror of penal laws impending over their heads would make them extremely cautious of betraying their sentiments. This contributed, with the prevalent tone of public opinion, to throw such a weight into the puritanical scale in the commons, as it required all the queen's energy to counterbalance.

§ 7. In the parliament that met in April, 1571, a few days only after the commencement of the session, Mr. Strickland, "a grave and ancient man of great zeal," as the reporter styles him, began the attack by a long but apparently temperate speech on the abuses of the church, tending only to the retrenchment of a few superstitions, as they were thought, in the liturgy, and to some reforms in the disposition of benefices. He proceeded to bring in a bill for the reformation of the common prayer, which was read a first time. Abuses in respect to benefices appear to have been a copious theme of scandal. The power of dispensation, which had occasioned so much clamour in former ages, instead of being abolished or even reduced into bounds at the Reformation, had been transferred entire from the pope to the king and archbishop. And, after the council of Trent had effected such considerable reforms in the catholic discipline, it seemed a sort of reproach to the protestant church of England that she retained all the dispensations, the exemptions, the pluralities, which had been deemed the peculiar corruptions of the worst times of popery.

The house of commons gave, in this session, a more forcible proof of its temper in ecclesiastical concerns. The articles of the English church, originally drawn up under Edward VI., after having undergone some alteration were finally reduced to their

present form by the convocation of 1562. But it seems to have been thought necessary that they should have the sanction of parliament, in order to make them binding on the clergy. Of these articles the far greater portion relate to matters of faith, concerning which no difference of opinion had as yet appeared. Some few, however, declare the lawfulness of the established form of consecrating bishops and priests, the supremacy of the crown, and the power of the church to order rites and ceremonies. These involved the main questions at issue; and the puritan opposition was strong enough to withhold the approbation of the legislature from this part of the national symbol. The act of 13 Eliz. c. 12, accordingly enacts that every priest or minister shall subscribe to all the articles of religion which *only* concern the confession of the true Christian faith, and the doctrine of the sacraments, comprised in a book entitled 'Articles whereupon it was agreed,' &c. That the word *only* was inserted for the sake of excluding the articles which established church authority and the actual discipline, is evident from a remarkable conversation which Mr. Wentworth, the most distinguished assertor of civil liberty in this reign, relates himself in a subsequent session (that of 1575) to have held on the subject with archbishop Parker. "I was," he says, "among others, the last parliament, sent for unto the archbishop of Canterbury, for the articles of religion that then passed this house. He asked us 'Why we did put out of the book the articles for the homilies, consecration of bishops, and such like?' 'Surely, sir,' said I, 'because we were so occupied in other matters that we had no time to examine them how they agreed with the word of God.' 'What!' said he, 'surely you mistake the matter; you will refer yourselves wholly to us therein?' 'No; by the faith I bear to God,' said I, 'we will pass nothing before we understand what it is; for that were but to make you popes: make you popes who list,' said I, 'for we will make you none.' And sure, Mr. Speaker, the speech seemed to me to be a pope-like speech, and I fear lest our bishops do attribute this of the pope's canons unto themselves; *Papa non potest errare.*" The intrepid assertion of the right of private judgment on one side, and the pretension to something like infallibility on the other, which have been for more than two centuries since so incessantly repeated, are here curiously brought into contrast. As to the reservation itself, obliquely insinuated rather than expressed in this statute, it proved of little practical importance, the bishops having always exacted a subscription to the whole thirty-nine articles.

It was not to be expected that the haughty spirit of Parker, which had refused to spare the honest scruples of Sampson and Cokerdale, would abate of its rigour towards the daring parliament

Cartwright. His disciples, in truth, from dissatisfied subjects of the church, were become her downright rebels, with whom it was hardly practicable to make any compromise that would avoid a schism, except by sacrificing the splendour and jurisdiction of an established hierarchy. The archbishop continued, therefore, to harass the puritan ministers, suppressing their books, silencing them in churches, prosecuting them in private meetings. Sandys and Grindal, the moderate reformers of our spiritual aristocracy, not only withdrew their countenance from a party who aimed at improvement by subversion, but fell, according to the unhappy temper of their age, into courses of undue severity. Not merely the preachers, to whom, as regular ministers, the rules of canonical obedience might apply, but plain citizens, for listening to their sermons, were dragged before the high commission, and imprisoned upon any refusal to conform.

§ 8. The puritans meanwhile had not lost all their friends in the council, though it had become more difficult to protect them. One powerful reason undoubtedly operated on Walsingham and other ministers of Elizabeth's court against crushing their party; namely, the precariousness of the queen's life, and the unsettled prospects of succession. They had already seen in the duke of Norfolk's conspiracy that more than half the superior nobility had committed themselves to support the title of the queen of Scots. That title was sacred to all who professed the catholic religion, and respectable to a large proportion of the rest. But deeming, as they did, that queen a convicted adulteress and murderer, the determined enemy of their faith, and conscious that she could never forgive those who had counselled her detention and sought her death, it would have been unworthy of their prudence and magnanimity to have gone as sheep to the slaughter, and risked the destruction of protestantism under a second Mary, if the intrigues of ambitious men, the pusillanimity of the multitude, and the specious pretext of hereditary right, should favour her claims on a demise of the crown. They would have failed perhaps in attempting to resist them; but upon resistance I make no question that they had resolved. In so awful a crisis, to what could they better look than to the stern, intrepid, uncompromising spirit of puritanism; congenial to that of the Scottish reformers, by whose aid the lords of the congregation had overthrown the ancient religion in despite of the regent Mary of Guise? Of conforming churchmen, in general, they might well be doubtful, after the oscillations of the three preceding reigns; but every abhorrer of ceremonies, every rejecter of prelatical authority, might be trusted as protestant to the heart's core, whose sword would be as ready as his tongue to withstand idolatry. Nor had the puritans admitted, even in theory, those extravagant notions of

passive obedience which the church of England had thought fit to mingle with her homilies. While the victory was yet so uncertain, while contingencies so incalculable might renew the struggle, all politic friends of the Reformation would be anxious not to strengthen the enemy by disunion in their own camp. Thus sir Francis Walsingham, who had been against enforcing the obnoxious habits, used his influence with the scrupulous not to separate from the church on account of them; and again, when the schism had already ensued, thwarted, as far as his credit in the council extended, that harsh intolerance of the bishops which aggravated its mischiefs.

§ 9. A matter very much connected with the present subject will illustrate the different schemes of ecclesiastical policy pursued by the two parties that divided Elizabeth's council. The clergy in several dioceses set up, with encouragement from their superiors, a certain religious exercise, called prophesyings. They met at appointed times to expound and discuss together particular texts of Scripture, under the presidency of a moderator appointed by the bishop, who finished by repeating the substance of their debate, with his own determination upon it. These discussions were in public, and it was contended that this sifting of the grounds of their faith and habitual argumentation would both tend to edify the people, very little acquainted as yet with their religion, and supply in some degree the deficiencies of learning among the pastors themselves. These deficiencies were indeed glaring, and it is not unlikely that the prophesyings might have had a salutary effect if it had been possible to exclude the prevailing spirit of the age. It must, however, be evident to any one who had experience of mankind, that the precise clergy, armed not only with popular topics, but with an intrinsic superiority of learning and ability to support them, would wield these assemblies at their pleasure, whatever might be the regulations devised for their control. The queen entirely disliked them, and directed Parker to put them down. He wrote accordingly to Parkhurst, bishop of Norwich, for that purpose. The bishop was unwilling to comply; and some privy-councillors interfered by a letter, enjoining him not to hinder those exercises so long as nothing contrary to the church was taught therein. This letter was signed by sir Thomas Smith, sir Walter Mildmay, bishop Sandys, and sir Francis Knollys. It was, in effect, to reverse what the archbishop had done. Parker, however, who was not easily daunted, wrote again to Parkhurst, that, understanding he had received instructions in opposition to the queen's orders and his own, he desired to be informed what they were. This seems to have checked the councillors, for we find that the prophesyings were now put down.

§ 10. Though many will be of opinion that Parker took a statesmanlike view of the interests of the church of England in discouraging these exercises, they were generally regarded as so conducive to instruction that he seems to have stood almost alone in his opposition to them. Sandys' name appears to the above-mentioned letter of the council to Parkhurst. Cox, also, was inclined to favour the prophesyings; and Grindal, who in 1575 succeeded Parker in the see of Canterbury, bore the whole brunt of the queen's displeasure rather than obey her commands on this subject. He conceived that, by establishing strict rules with respect to the direction of those assemblies, the abuses, which had already appeared, of disorderly debate and attacks on the discipline of the church, might be got rid of without entirely abolishing the exercise. The queen would hear of no middle course, and insisted both that the prophesyings should be discontinued and that fewer licences for preaching should be granted. For no parish priest could, without a licence, preach any discourse except the regular homilies; and this was one of the points of contention with the puritans.⁴ Grindal steadily refused to comply with this injunction, and was in consequence sequestered from the exercise of his jurisdiction for the space of about five years, till, on his making a kind of submission, the sequestration was taken off not long before his death. The queen, by circular letters to the bishops, commanded them to put an end to the prophesyings, which were never afterwards renewed.

⁴ In one of the canons enacted by convocation in 1571, and on which rather an undue stress has been laid in late controversies, we find a restraint laid on the teaching of the clergy in their sermons who were enjoined to preach nothing but what was agreeable to scripture, and had been collected out of scripture by the catholic fathers and ancient bishops. *Imprimis videbunt concionatores, ne quid unquam doceant pro concione, quod a populo religiosè teneri et credi velint, nisi quod consentaneum sit doctrinæ veteris aut novi testamenti, quodque ex illâ ipsâ doctrinâ Catholici patres et veteris episcopi collegerint.* This appears to have been directed, in the first place, against those who made use of scholastic authorities and the doctors of the last four or five ages, to whom the church of Rome was fond of appealing; and, secondly, against those who, with little learning or judgment, set up their own interpretations of scripture. Against both these it seemed wise to guard, by directing preachers to the early fathers, whose

authority was at least better than that of Romish schoolmen or modern sciolists. It is to be remembered that the exegetical part of divinity was not in the state in which it is at present. Most of the writers to whom a modern preacher has recourse were unborn. But that the contemporary reformers were not held in low estimation as guides in scriptural interpretation, appears by the injunction given some years afterwards that every clergyman should provide himself with a copy of Bullinger's *decades*. The authority given in the above canon to the fathers was certainly but a presumptive one; and, such as it was, it was given to each individually, not to the whole body, on any notion of what has been called catholic consent: since how was a poor English preacher to ascertain this? The real question as to the authority of the fathers in our church is not whether they are not copiously quoted, but whether our theologians surrendered their own opinion, or that of their side, in deference to such authority when it made against them.

Whitgift, bishop of Worcester, a person of a very opposite disposition, was promoted, in 1583, to the primacy on Grindal's decease. He had distinguished himself some years before by an answer to Cartwright's Admonition, written with much ability, but not falling short of the work it undertook to confute in rudeness and asperity. It is seldom good policy to confer such eminent stations in the church on the gladiators of theological controversy, who, from vanity and resentment, as well as the course of their studies, will always be prone to exaggerate the importance of the disputes wherein they have been engaged, and to turn whatever authority the laws or the influence of their place may give them against their adversaries. This was fully illustrated by the conduct of archbishop Whitgift, whose elevation the wisest of Elizabeth's counsellors had ample reason to regret. In a few months after his promotion he gave an earnest of the rigour he had determined to adopt by promulgating articles for the observance of discipline. One of these prohibited all preaching, reading, or catechising in private houses, whereto any not of the same family should resort, "seeing the same was never permitted as lawful under any Christian magistrate." But that which excited the loudest complaints was the subscription to three points, the queen's supremacy, the lawfulness of the common prayer and ordination service, and the truth of the whole thirty-nine articles, exacted from every minister of the church. These indeed were so far from novelties that it might seem rather supererogatory to demand them (if in fact the law required subscription to all the articles); yet it is highly probable that many had hitherto eluded the legal subscriptions, and that others had conceived their scruples after having conformed to the prescribed order. The archbishop's peremptory requisition passed, perhaps justly, for an illegal stretch of power. It encountered the resistance of men pertinaciously attached to their own tenets, and ready to suffer the privations of poverty rather than yield a simulated obedience. To suffer, however, in silence has at no time been a virtue with our protestant dissenters. The kingdom resounded with the clamour of those who were suspended or deprived of their benefices and of their numerous enjoins. They appealed from the archbishop to the privy council; the gentry of Kent and other counties strongly interposed in their behalf. They had powerful friends at court, especially Knir ŷs, who wrote a warm letter to the archbishop. But, secure of the queen's support, who was now chiefly under the influence of Sir Christopher Hatton, a decided enemy to the puritans, Whitgift relented not a jot of his resolution, and went far greater lengths than Parker had ever ventured, or perhaps had desired, to proceed.

§ 11. The act of supremacy, while it restored all ecclesiastical

jurisdiction to the crown, empowered the queen to execute it by commissioners appointed under the great seal, in such manner and for such time as she should direct, whose power should extend to visit, correct, and amend all heresies, schisms, abuses, and offences whatever, which fall under the cognizance and are subject to the correction of spiritual authority. Several temporary commissions had sat under this act with continually augmented powers before that appointed in 1583, wherein the jurisdiction of this anomalous court almost reached its zenith. It consisted of forty-four commissioners, twelve of whom were bishops, many more privy-councillors, and the rest either clergymen or civilians. This commission, usually called *The High Commission Court*, after reciting the acts of supremacy, uniformity, and two others, directs them to inquire from time to time, as well by the oaths of twelve good and lawful men as by witnesses and all other means they can devise, of all offences, contempts, or misdemeanors done and committed contrary to the tenor of the said several acts and statutes; and also to inquire of all heretical opinions, seditious books, contempts, conspiracies, false rumours or talks, slanderous words and sayings, &c., contrary to the aforesaid laws. Power is given to any three commissioners, of whom one must be a bishop, to punish all persons absent from church, according to the act of uniformity, or to visit and reform heresies and schisms according to law; to deprive all beneficed persons holding any doctrine contrary to the thirty-nine articles; to punish incests, adulteries, and all offences of the kind; to examine all suspected persons on their oaths, and to punish all who should refuse to appear or to obey their orders by spiritual censure, or by discretionary fine or imprisonment; to alter and amend the statutes of colleges, cathedrals, schools, and other foundations, and to tender the oath of supremacy according to the act of parliament.

Master of such tremendous machinery, the archbishop proceeded to call into action one of its powers, contained for the first time in the present commission, by tendering what was technically styled the oath *ex officio* to such of the clergy as were surmised to harbour a spirit of puritanical disaffection. This procedure, which was wholly founded on the canon law, consisted in a series of interrogations, so comprehensive as to embrace the whole scope of clerical uniformity, yet so precise and minute as to leave no room for evasion, to which the suspected party was bound to answer upon oath. So repugnant was this to the rules of our English law and to the principles of natural equity, that no species of ecclesiastical tyranny seems to have excited so much indignation. Lord Burleigh, who, though at first rather friendly to Whitgift, was soon disgusted by his intolerant and arbitrary behaviour, wrote in strong terms of remonstrance against these articles of examination, as "so curiously

peuned, so full of branches and circumstances, as he thought the inquisitors of Spain used not so many questions to comprehend and to trap their preys." The primate replied by alleging reasons in behalf of the mode of examination, but very frivolous, and such as a man determined to persevere in an unwarrantable course of action may commonly find. They had little effect on the calm and sagacious mind of the treasurer, who continued to express his dissatisfaction, both individually and as one of the privy council. But the extensive jurisdiction improvidently granted to the ecclesiastical commissioners, and which the queen was not at all likely to recall, placed Whitgift beyond the control of the temporal administration.

The archbishop, however, did not stand alone in this impracticable endeavour to overcome the stubborn sectaries by dint of hard usage. Several other bishops were engaged in the same uncharitable course, but especially Aylmer of London, who has left a worse name in this respect than any prelate of Elizabeth's reign. The violence of Aylmer's temper was not redeemed by many virtues; it is impossible to exonerate his character from the imputations of covetousness and of plundering the revenues of his see: faults very prevalent among the bishops of that period. The privy council wrote sometimes to expostulate with Aylmer in a tone which could hardly have been employed towards a man in his station who had not forfeited the general esteem. Thus, upon occasion of one Benison, whom he had imprisoned without cause, we find a letter signed by Burleigh, Leicester, Walsingham, and even Hatton, besides several others, urging the bishop to give the man a sum of money, since he would recover damages at law, which might hurt his lordship's credit. Aylmer, however, who was of a stout disposition, especially when his purse was interested, objected strongly to this suggestion, offering rather to confer on Benison a small living, or to let him take his action at law. The result does not appear, but probably the bishop did not yield.

§ 12. There is no middle course, in dealing with religious sectaries, between the persecution that exterminates and the toleration that satisfies. They were wise in their generation, the Loaisas and Valdes of Spain, who kindled the fires of the inquisition, and quenched the rising spirit of protestantism in the blood of a Seso and a Cazalla. But, sustained by the favouring voice of his associates, and still more by that firm persuasion which bigots never know how to appreciate in their adversaries, a puritan minister set at nought the vexatious and arrogant tribunal before which he was summoned. Exasperated, not overawed, the sectaries threw off what little respect they had hitherto paid to the hierarchy. They had learned, in the earlier controversies of the Reformation, the use, or,

more truly, the abuse, of that powerful lever of human bosoms, the press. He who in Saxony had sounded the first trumpet-peat against the battlements of Rome had often turned aside from his graver labours to excite the rude passions of the populace by low ribaldry and exaggerated invective; nor had the English reformers ever scrupled to win proselytes by the same arts. What had been accounted holy zeal in the mitred Bale and martyred Latimer, might plead some apology from example in the aggrieved puritan. Pamphlets, chiefly anonymous, were rapidly circulated throughout the kingdom, inveighing against the prelacy. Of these libels the most famous went under the name of Martin Mar-prelate, a vizored knight of those lists, behind whose shield a host of sturdy puritans were supposed to fight. These were printed at a moveable press, shifted to different parts of the country as the pursuit grew hot, and contained little serious argument, but the unwarrantable invectives of angry men, who stuck at no calumny to blacken their enemies.⁵ If these insults upon authority are apt sometimes to shock us even now, when long usage has rendered such licentiousness of seditious and profligate libellers almost our daily food, what must they have seemed in the reign of Elizabeth, when the press had no acknowledged liberty, and while the accustomed tone in addressing those in power was little better than servile adulation?

A law had been enacted some years before, levelled at the books dispersed by the seminary priests, which rendered the publication of seditious libels against the queen's government a capital felony.⁶ This act, by one of those strained constructions which the judges were commonly ready to put upon any political crime, was brought to bear on some of these puritanical writings. The authors of Martin Mar-prelate could not be traced with certainty; but strong suspicions having fallen on one Penry, a young Welshman, he was tried some time after for another pamphlet, containing sharp reflections on the queen herself, and received sentence of death, which it was thought proper to carry into execution. Udal, a puritan minister, fell into the grasp of the same statute for an alleged libel on the bishops, which had surely a very indirect reference to the queen's administration. His trial, like most other political trials of the age, disgraces the name of English justice. It consisted mainly in a pitiful attempt by the court to entrap him into a confession that the imputed libel was of his writing, as to which their proof was deficient. Though he avoided this snare, the jury did not fail to obey the directions they received to convict him. So far from being concerned in Martin's writings, Udal professed his disapprobation of them, and his ignorance of the author. This sentence

⁵ The first of Martin Mar-prelate's libels were published in 1538.

⁶ 23 Eliz. c. 2.

appeared too iniquitous to be executed even in the eyes of Whitgift, who interceded for his life; but he died of the effects of confinement.

§ 13. If the libellous pen of Martin Mar-prelate was a thorn to the rulers of the church, they had still more cause to take alarm at an overt measure of revolution which the discontented party began to effect about the year 1590. They set up, by common agreement, their own platform of government by synods and classes; the former being a sort of general assemblies, the latter held in particular shires or dioceses, agreeably to the presbyterian model established in Scotland. In these meetings debates were had, and determinations usually made, sufficiently unfavourable to the established system. The ministers composing them subscribed to the puritan book of discipline. These associations had been formed in several counties, but chiefly in those of Northampton and Warwick, under the direction of Cartwright, the legislator of their republic, who possessed, by the earl of Leicester's patronage, the mastership of a hospital in the latter town. It would be unjust to censure the archbishop for interfering to protect the discipline of his church against these innovators, had but the means adopted for that purpose been more consonant to equity. Cartwright with several of his sect were summoned before the ecclesiastical commission; where, refusing to inculcate themselves by taking the oath *ex officio*, they were committed to the fleet. This punishment not satisfying the rigid churchmen, and the authority of the ecclesiastical commission being incompetent to inflict any heavier judgment, it was thought fit the next year to remove the proceedings into the court of star-chamber. The judges, on being consulted, gave it as their opinion, that, since far less crimes had been punished by condemnation to the galleys or perpetual banishment, the latter would be fittest for their offence. But several of the council had more tender regards to sincere though intractable men; and in the end they were admitted to bail upon a promise to be quiet, after answering some interrogatories respecting the queen's supremacy and other points, with civility and an evident wish to avoid offence. It may be observed that Cartwright explicitly declared his disapprobation of the libels under the name of Martin Mar-prelate.

It was imputed to the puritan faction with more or less of truth, that, not content with the subversion of episcopacy and of the whole ecclesiastical polity established in the kingdom, they maintained principles that would essentially affect its civil institutions. Their denial, indeed, of the queen's supremacy, carried to such lengths as I have shown above, might justly be considered as a derogation of her temporal sovereignty. Many of them asserted the obligation of the judicial law of Moses at least in criminal cases and deduce

from this the duty of putting idolaters (that is, papists), adulterers, witches, and demoniacs, sabbath-breakers, and several other classes of offenders to death. They claimed to their ecclesiastical assemblies the right of determining "all matters wherein breach of charity may be, and all matters of doctrine and manners, so far as appertaineth to conscience." They took away the temporal right of patronage to churches, leaving the choice of ministers to general suffrage. There are even passages in Cartwright's Admonition which intimate that the commonwealth ought to be fashioned after the model of the church. But these it would not be candid to press against the more explicit declarations of all the puritans in favour of a limited monarchy, though they grounded its legitimacy on the republican principles of popular consent. And with respect to the former opinions, they appear to have been by no means common to the whole puritan body; some of the deprived and imprisoned ministers even acknowledging the queen's supremacy in as full a manner as the law conferred it on her, and as she professed to claim it.

The pretensions advanced by the school of Cartwright did not seem the less dangerous to those who cast their eyes upon what was passing in Scotland, where they received a practical illustration. In that kingdom a form of polity very nearly conforming to the puritanical platform had become established at the reformation in 1560; except that the office of bishop or superintendent still continued, but with no paramount, far less arbitrary dominion, and subject even to the provincial synod, much more to the general assembly of the Scottish church. Even this very limited episcopacy was abolished in 1592. The presbyterian clergy, individually and collectively, displayed the intrepid, haughty, and untractable spirit of the English puritans. Though Elizabeth had from policy abetted the Scottish clergy in their attacks upon the civil administration, this connexion itself had probably given her such an insight into their temper as well as their influence that she must have shuddered at the thought of seeing a republican assembly substituted for those faithful satraps her bishops, so ready to do her bidding, and so patient under the hard usage she sometimes bestowed on them.

§ 14. These prelates did not, however, obtain so much support from the house of commons as from their sovereign. In that assembly a determined band of puritans frequently carried the victory against the courtiers. Every session exhibited proofs of their dissatisfaction with the state of the church. The crown's influence would have been too weak without stretches of its prerogative. The commons in 1575 received a message forbidding them to meddle with religious concerns. For five years afterwards the

queen did not convoke parliament, of which her dislike to their puritanical temper might in all probability be the chief reason. But, when they met again in 1580, the same topic of ecclesiastical grievances, which had by no means abated during the interval, was revived. The commons appointed a committee, formed only of the principal officers of the crown who sat in the house, to confer with some of the bishops, according to the irregular and imperfect course of parliamentary proceedings in that age, "touching the griefs of this house for some things very requisite to be reformed in the church, as the great number of unlearned and unable ministers, the great abuse of excommunications for every matter of small moment, the commutation of penances, and the great multitude of dispensations and pluralities, and other things very hurtful to the church." The committee reported that they found some of the bishops desirous of a remedy for the abuses they confessed, and of joining in a petition for that purpose to her majesty; which had accordingly been done, and a gracious answer, promising all convenient reformation, but laying the blame of remissness upon some prelates, had been received. This the house took with great thankfulness. It was exactly the course which pleased Elizabeth, who had no regard for her bishops, and a real anxiety that her ecclesiastical as well as temporal government should be well administered, provided her subjects would intrust the sole care of it to herself, or limit their interference to modest petitioning.

A new parliament having been assembled, soon after Whitgift on his elevation to the primacy had begun to enforce an universal conformity, the lower house drew up a petition in sixteen articles, to which they requested the lords' concurrence, complaining of the oath *ex officio*, the subscription to the three new articles, the abuses of excommunication, licences for non-residence, and other ecclesiastical grievances. The lords replied coolly that they conceived many of those articles which the commons had proposed to be unnecessary, and that others of them were already provided for; and that the uniformity of the common prayer, the use of which the commons had requested to leave in certain respects to the minister's discretion, had been established by parliament. The two archbishops, Whitgift and Sandys, made a more particular answer to each article of the petition, in the name of their brethren. But, in order to show some willingness towards reformation, they proposed themselves, in convocation, a few regulations for redress of abuses, none of which, however, on this occasion, though they received the royal assent, were submitted to the legislature; the queen in fact maintaining an insuperable jealousy of all intermeddling on the part of parliament with her exclusive supremacy over the church. Excluded by Elizabeth's jealousy from entertaining these religious

innovations, which would probably have met with no unfavourable reception from a free parliament, the commons vented their ill-will towards the dominant hierarchy in complaints of ecclesiastical grievances, and measures to redress them; as to which, even with the low notions of parliamentary right prevailing at court, it was impossible to deny their competence. Several bills were introduced this session of 1584-5 into the lower house, which, though they had little chance of receiving the queen's assent, manifest the sense of that assembly, and in all likelihood of their constituents. One of these imported that bishops should be sworn in one of the courts of justice to do nothing in their office contrary to the common law. Another went to restrain pluralities, as to which the prelates would very reluctantly admit of any limitation. A bill of the same nature passed the commons in 1589, though not without some opposition. The clergy took so great alarm at this measure that the convocation addressed the queen in vehement language against it; and the archbishop throwing all the weight of his advice and authority into the same scale, the bill expired in the upper house. A similar proposition in the session of 1601 seems to have miscarried in the commons. In the next chapter will be found other instances of the commons' reforming temper in ecclesiastical concerns, and the queen's determined assertion of her supremacy.

The oath *ex officio*, binding the taker to answer all questions that should be put to him, inasmuch as it contravened the generous maxim of English law, that no one is obliged to criminate himself, provoked very just animadversion. Morice, attorney of the court of wards, not only attacked its legality with arguments of no slight force, but introduced a bill to take it away. This was on the whole well received by the house; and Sir Francis Knollys, the stanch enemy of episcopacy, though in high office, spoke in its favour. But the queen put a stop to the proceeding, and Morice lay some time in prison for his boldness. The civilians, of whom several sat in the lower house, defended a mode of procedure that had been borrowed from their own jurisprudence. This revived the ancient animosity between them and the common lawyers. The latter had always manifested a great jealousy of the spiritual jurisdiction, and had early learned to restrain its exorbitances by writs of prohibition from the temporal courts. Whitgift, as tenacious of power as the most ambitious of his predecessors, murmured like them at this subordination, for such it evidently was, to a lay tribunal. But the judges, who found as much gratification in exerting their power as the bishops, paid little regard to the remonstrances of the latter. We find the law reports of this and the succeeding reign full of cases of prohibitions.

§ 15. Notwithstanding the tendency towards puritanism which

grants from her, continued to prey upon their succulent victim. Few of her council imitated the noble disinterestedness of Walsingham, who spent his own estate in her service, and left not sufficient to pay his debts. The documents of that age contain ample proofs of their rapacity. Thus Cecil surrounded his mansion-house at Burleigh with estates once belonging to the see of Peterborough. Thus Hatton built his house in Holborn on the bishop of Ely's garden. Cox, on making resistance to this spoliation, received a singular epistle from the queen.⁹ This bishop, in consequence of such vexations, was desirous of retiring from the see before his death. After that event Elizabeth kept it vacant eighteen years. During this period we have a petition to her from lord keeper Puckering that she would confer it on Scambler, bishop of Norwich, then eighty-eight years old, and notorious for simony, in order that he might give him a lease of part of the lands. These transactions denote the mercenary and rapacious spirit which leavened almost all Elizabeth's courtiers.

The bishops of this reign do not appear, with some distinguished exceptions, to have reflected so much honour on the established church as those who attach a superstitious reverence to the age of the Reformation are apt to conceive. In the plunder that went forward they took good care of themselves. Charges against them of simony, corruption, covetousness, and especially destruction of their church estates for the benefit of their families, are very common,—sometimes no doubt unjust, but too frequent to be absolutely without foundation. The council often wrote to them, as well as concerning them, with a sort of asperity which would astonish one of their successors. And the queen never restrained herself in treating them on any provocation with a good deal of rudeness, of which I have just mentioned an egregious example. In her speech to parliament on closing the session of 1584, when many complaints against the rulers of the church had rung in her ears, she told the bishops that, if they did not amend what was wrong, she meant to depose them. For there seems to have been no question in that age but that this might be done by virtue of the crown's supremacy.

The church of England was not left by Elizabeth in circumstances that demanded applause for the policy of her rulers. After forty years of constantly aggravated molestation of the nonconforming clergy, their numbers were become greater, their popularity

⁹ It was couched in the following terms :—

"Prond Prelate,

"You know what you were before I made you what you are: if you do not immediately comply with my request, by G— I will unfrock you.

"Elizabeth."

Poor Cox wrote a very good letter before this, printed in Strype's *Annals*, vol. ii. Append. 84. The names of Hatton Garden and Ely Place (*Mantua vœ misera nimum vicina Cremona*) still bear witness to the encroaching lord keeper and the ejected bishop.

more deeply rooted, their enmity to the established order more irreconcilable. The best apology that can be made for Elizabeth's tenaciousness of those ceremonies which produced this fatal contention I have already suggested, without much express authority from the records of that age; namely, the justice and expediency of winning over the catholics to conformity, by retaining as much as possible of their accustomed rites. But in the latter period of the queen's reign this policy had lost a great deal of its application, or rather the same principle of policy would have dictated numerous concessions in order to satisfy the people. It appears by no means unlikely that, by reforming the abuses and corruption of the spiritual courts, by abandoning a part of their jurisdiction, so heterogeneous and so unduly obtained, by abrogating obnoxious and at best frivolous ceremonies, by restraining pluralities of benefices, by ceasing to discountenance the most diligent ministers, and by more temper and disinterestedness in their own behaviour, the bishops would have palliated, to an indefinite degree, that dissatisfaction with the established scheme of polity, which its want of resemblance to that of other protestant churches must more or less have produced.

NOTE TO CHAPTER IV.

HOOKER'S ECCLESIASTICAL
POLITY (p. 111).

THE advocates of a presbyterian church had always thought it sufficient to prove that it was conformable to the apostolical scheme as deduced merely from the Scriptures. A pious reverence for the sacred writings, which they made almost their exclusive study, had degenerated into very narrow views on the great themes of natural religion and the moral law, as deducible from reason and sentiment. These, as most of the various families of their descendants continue to do, they greatly slighted, or even treated as the mere chimeras of heathen philosophy. If they looked to the Mosaic law as the standard of criminal jurisprudence, if they sought precedents from Scripture for all matters of temporal policy, much more would they deem the practice of the Apostles an unerring and immutable rule for the discipline of the Christian church. To encounter these adversaries, Hooker took a far more original course than the ordinary controversialists, who fought their battles with conflicting interpretations of Scriptural texts or passages from the fathers. He inquired into the nature and foundation of law itself, as the rule of operation to all created beings, yielding thereto obedience by unconscious necessity, or sensitive appetite, or reasonable choice; reviewing especially those laws that regulate human agency, as they arise out of moral relations, common to our species, or the institutions of political societies, or the intercommunity of independent nations; and having thoroughly established the fundamental distinction between laws natural and positive, eternal and temporary, immutable and variable, he came with all this strength of moral philosophy to discriminate by the same criterion the various rules and precepts contained in the Scriptures. It was a kind of maxim among the puritans that Scripture was so much the exclusive rule of human actions that whatever, in matters at least concerning religion, could not be found to have its authority, was unlawful. Hooker devoted the whole second book of

his work to the refutation of this principle. He proceeded afterwards to attack its application more particularly to the episcopal scheme of church government, and to the various ceremonies or usages which these sectaries treated as either absolutely superstitious, or at least as impositions without authority. It was maintained by this great writer, not only that ritual observances are variable according to the discretion of ecclesiastical rulers, but that no certain form of polity is set down in Scripture as generally indispensable for a Christian church. Far, however, from conceding to his antagonists the fact which they assumed, he contended for episcopacy as an apostolical institution, and always preferable, when circumstances would allow its preservation, to the more democratical model of the Calvinistic congregations. "If we did seek," he says, "to maintain that which most advantageth our own cause, the very best way for us and the strongest against them were to hold, even as they do, that in Scripture there must needs be found some particular form of church polity which God hath instituted, and which for that very cause belongeth to all churches at all times. But with any such partial eye to respect ourselves, and by cunning to make those things seem the truest which are the fittest to serve our purpose, is a thing which we neither like nor mean to follow."

The richness of Hooker's eloquence is chiefly displayed in his first book; beyond which, perhaps, few who want a taste for ecclesiastical reading are likely to proceed. The second and third, however, though less brilliant, are not inferior in force and comprehensiveness of reasoning. The eighth and last returns to the subject of civil government, and expands, with remarkable liberality, the principles he had laid down as to its nature in the first book. Those that intervene are mostly confined to a more minute discussion of the questions mooted between the church and puritans; and in these, as far as I have looked into them, though Hooker's argument is always vigorous and logical, and he seems to be exempt from that abusive insolence

to which polemical writers were then even more prone than at present, yet he has not altogether the terseness or lucidity which long habits of literary warfare, and, perhaps, a natural turn of mind, have given to some expert dialecticians. In respect of language, the three posthumous books, partly from having never received the author's last touches, and partly, perhaps, from his weariness of the labour, are beyond comparison less elegantly written than the preceding.

The better parts of the Ecclesiastical Polity bear a resemblance to the philosophical writings of antiquity, in their defects as well as their excellences. Hooker is often too vague in the use of general terms, too inconsiderate in the admission of principles, too apt to acquiesce in the scholastic pseudo-philosophy, and, indeed, in all received tenets; he is comprehensive rather than sagacious, and more fitted to sift the truth from the stores of accumulated learning than to seize it by an original impulse of his own mind; somewhat also impeded, like many other great men of that and the succeeding century, by too much acquaintance with books, and too much deference for their authors. It may be justly objected to some passages that they elevate ecclesiastical authority, even in matters of belief, with an exaggeration not easily reconciled to the protestant right of private judgment, and even of dangerous consequence in those times; as when he inclines to give a decisive voice in theological controversies to general councils; not, indeed, on the principles of the church of Rome, but on such as must end in the same conclusion, the high probability that the aggregate judgment of many grave and learned men should be well founded.* Nor

would it be difficult to point out several other subjects, such as religious toleration, as to which he did not emancipate himself from the trammels of prejudice. But, whatever may be the imperfections of his Ecclesiastical Polity, they are far more than compensated by its eloquence and its reasoning, and above all by that deep pervading sense of the relation between man and his Creator, as the groundwork of all eternal law, which rendered the first book of this work a rampart, on the one hand, against the puritan school who shunned the light of nature as a deceitful meteor; and, on the other, against that immoral philosophy which, displayed in the dark precepts of Machiavel, or lurking in the desultory sallies of Montaigne, and not always rejected by writers of more apparent seriousness, threatened to destroy the sense of intrinsic distinctions in the quality of actions, and to convert the maxims of state-craft and dissembling policy into the rule of life and manners.

Nothing, perhaps, is more striking to a reader of the Ecclesiastical Polity than the constant and even excessive predilection of Hooker for those liberal principles of civil government which are sometimes so just and always so attractive. Upon these subjects his theory absolutely coincides with that of Locke. The origin of government, both in right and in fact, he explicitly derives from a primary contract; "without which consent there were no reason that one should take upon him to be lord or judge over another; because, although there be, according to the opinion of some very great and judicious men, a kind of natural right in the noble, wise, and virtuous, to govern them which are of servile disposition, nevertheless, for mani-

* "If the natural strength of men's wit may by experience and study attain unto such ripeness in the knowledge of things human, that men in this respect may presume to build somewhat upon their judgment, what reason have we to think but that, even in matters divine, the like wits, furnished with necessary helps, exercised in Scripture with like diligence, and assisted with the grace of Almighty God, may grow unto so much perfection of knowledge, that men shall have just cause, when anything pertinent unto faith and religion is doubted of, the more willingly to incline their minds towards that which the sentence of so grave, wise, and learned in that faculty shall judge most sound? For the controversy is of the weight of such men's judgment," &c. But Hooker's mistake was to exaggerate the weight of such men's judgment, and not to allow enough for their passions and infirmities, the imperfection of their knowledge, their connivance with power, their attachment to names and persons, and all the other drawbacks to ecclesiastical authority.

It is well known that the preface to the Ecclesiastical Polity was one of the two books to which James II. ascribed a return into the fold of Rome; and it is not difficult to perceive by what course of reasoning on the positions it contains this was effected

festation of this their right, and men's more peaceable contentment on both sides, the assent of them who are to be governed seemeth necessary." "The lawful power," he observes elsewhere, "of making laws to command whole politic societies of men, belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself, and not either by express commission immediately and personally received from God, or else by authority received at first from their consent upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which public approbation hath not made so. But approbation not only they give, who personally declare their assent by voice, sign, or act; but also when others do it in their names, by right originally, at the least, derived from them. As in parliaments, councils, and the like assemblies, although we be not personally ourselves present, notwithstanding our assent is by reason of other agents there in our behalf. And what we do by others, no reason but that it should stand as our deed, no less effectually to bind us than if ourselves had done it in person." And in another place still more peremptorily: "Of this thing no man doubteth, namely, that in all societies, companies, and corporations, what severally each shall be bound unto, it must be with all their assents ratified. Against all equity it were that a man should suffer detriment at the hands of men for not observing that which he never did either by himself or others mediately or immediately agree unto."

These notions respecting the basis of political society, so far unlike what prevailed among the next generation of churchmen, are chiefly developed and dwelt upon in Hooker's concluding book, the eighth; and gave rise to a rumour, very sedulously propagated soon after the time of its publication, and still sometimes repeated, that the posthumous portion of his work had been interpolated or altered by the puritans. For this surmise, however, I am persuaded that there is no foundation. The three latter books are doubtless imperfect, and it is possible that verbal changes may have been made by their transcribers or editors; but the testimony that has been brought forward to throw a doubt over their authenticity consists in those vague and self-contradictory stories which gossiping compilers of literary anecdote can easily accumulate; while the intrinsic

evidence arising from the work itself, and which in this branch of criticism I am apt chiefly to rely, seems altogether to repel every suspicion. For not only the principles of civil government, presented in a more expanded form by Hooker in the eighth book, are precisely what he laid down in the first; but there is a peculiar chain of consecutive reasoning running through it, wherein it would be difficult to point out any passages that could be rejected without dismembering the context. It was his business in this part of the Ecclesiastical Polity to vindicate the queen's supremacy over the church; and this he has done by identifying the church with the commonwealth; no one, according to him, being a member of the one who was not also a member of the other. But as the constitution of the Christian church, so far as the laity partook in its government, by choice of pastors or otherwise, was undeniably democratical, he laboured to show, through the medium of the original compact of civil society, that the sovereign had received this, as well as all other powers, at the hands of the people. "Laws being made among us," he affirms, "are not by any of us so taken or interpreted as if they did receive their force from power which the prince doth communicate unto the parliament, or unto any other court under him, but from power which the whole body of the realm being naturally possessed with hath by free and deliberate assent derived unto him that ruleth over them so far forth as hath been declared; so that our laws made concerning religion do take originally their essence from the power of the whole realm and church of England."

In this system of Hooker and Locke, for it will be obvious to the reader that their principles were the same, there is much, if I am not mistaken, to disapprove. That no man can be justly bound by laws which his own assent has not ratified appears to me a position incompatible with the existence of society in its literal sense, or illusory in the sophistical interpretations by which it is usual to evade its meaning. It will be more satisfactory and important to remark the views which this great writer entertained of our own constitution, to which he frequently and fearlessly appeals, as the standing illustration of a government restrained by law. "I cannot choose," he says, "but commend highly their wisdom, by whom the foundation of the commonwealth hath been laid; wherein,

though no manner of person or cause be unsubject unto the king's power, yet so is the power of the king over all, and in all, limited, that unto all his proceedings the law itself is a rule. The axioms of our regal government are these: 'Lex facit regem'—the king's grant of any favour made contrary to the law is void;—'Rex nihil potest nisi quod jure potest'—what power the king hath he hath it by law: the bounds and limits of it are known, the entire community giveth general order by law how all things publicly are to be done; and the king as the head thereof, the highest in authority over all, causeth, according to the same law, every particular to be framed and ordered thereby. 'The whole body politic maketh laws, which laws give power unto the king; and the king having bound himself to use according to law that power, it so falleth out that the execution of the one is accomplished by the other.' These doctrines of limited monarchy recur perpetually in the eighth book; and though Hooker, as may be supposed, does not enter upon the perilous question of resistance, and even intimates that he does not see how the people can limit the extent of power once granted, unless where it escheats to them, yet he positively lays it down that usurpers of power, that is, lawful rulers arrogating more than the law gives to them, cannot in conscience bind any man to obedience.

It would, perhaps, have been a deviation from my subject to enlarge so much on these political principles in a writer of

any later age, when they had been openly sustained in the councils of the nation. But as the reigns of the Tudor family were so inauspicious to liberty that some have been apt to imagine its recollection to have been almost effaced, it becomes of more importance to show that absolute monarchy was, in the eyes of so eminent an author as Hooker, both pernicious in itself and contrary to the fundamental laws of the English commonwealth. Nor would such sentiments, we may surely presume, have been avowed by a man of singular humility, and whom we might charge with somewhat of an excessive deference to authority, unless they had obtained more currency, both among divines and lawyers, than the complaisance of courtiers in these two professions might lead us to conclude; Hooker being not prone to deal in paradoxes, nor to borrow from his adversaries that sturdy republicanism of the school of Geneva which had been their scandal. I cannot, indeed, but suspect that his whig principles in the last book are announced with a temerity that would have startled his superiors; and that its authenticity, however called in question, has been better preserved by the circumstance of a posthumous publication than if he had lived to give it to the world. Whitgift would probably have induced him to suppress a few passages incompatible with the servile theories already in vogue. It is far more usual that an author's genuine sentiments are perverted by means of his friends and patrons than of his adversaries.

little better than the caverns of murderers. Whoever was arraigned at their bar was almost certain to meet a virulent prosecutor, a judge hardly distinguishable from the prosecutor except by his ermine, and a passive pusillanimous jury. Those who are acquainted only with our modern decent and dignified procedure can form little conception of the irregularity of ancient trials; the perpetual interrogation of the prisoner, which gives most of us so much offence at this day in the tribunals of a neighbouring kingdom; and the want of all evidence except written, perhaps unattested, examinations or confessions.

The integrity of judges is put to the proof as much by prosecutions for seditious writings as by charges of treason. I have before mentioned the convictions of Udal and Penry for a felony created by the 23rd of Elizabeth; the former of which especially must strike every reader of the trial as one of the gross judicial iniquities of this reign. But, before this sanguinary statute was enacted, a punishment of uncommon severity had been inflicted upon one Stubbe, a puritan lawyer, for a pamphlet against the queen's intended marriage with the duke of Anjou. It will be in the recollection of most of my readers that, in the year 1579, Elizabeth exposed herself to much censure and ridicule, and inspired the justest alarm in her most faithful subjects, by entertaining, at the age of forty-six, the proposals of this young scion of the house of Valois. Her council, though several of them in their deliberations had much inclined against the preposterous alliance, yet in the end, displaying the compliance usual with the servants of self-willed princes, agreed, "conceiving," as they say, "her earnest disposition for this her marriage," to further it with all their power. Sir Philip Sidney, with more real loyalty, wrote her a spirited remonstrance, which she had the magnanimity never to resent. But she poured her indignation on Stubbe, who, not entitled to use a private address, had ventured to arouse a popular cry in his 'Gaping Gulph, in which England will be swallowed up by the French Marriage.' This pamphlet is very far from being, what some have ignorantly or unjustly called it, a virulent libel, but is written in a sensible manner, and with unfeigned loyalty and affection towards the queen. But, besides the main offence of addressing the people on state affairs, he had, in the simplicity of his heart, thrown out many allusions proper to hurt her pride, such as dwelling too long on the influence her husband would acquire over her, and imploring that she would ask her physicians whether to bear children at her years would not be highly dangerous to her life. Stubbe, for writing this pamphlet, received sentence to have his right hand cut off. When the penalty was inflicted, taking off his hat with his left, he exclaimed, "Long live queen Elizabeth!" Burleigh, who

knew that his fidelity had borne so rude a test, employed him afterwards in answering some of the popish libellers.

There is no room for wonder at any verdict that could be returned by a jury when we consider what means the government possessed of securing it. The sheriff returned a panel, either according to express directions, of which we have proofs, or to what he judged himself of the crown's intention and interest. If a verdict had gone against the prosecution in a matter of moment, the jurors must have laid their account with appearing before the star-chamber; lucky if they should escape, on humble retraction, with sharp words, instead of enormous fines and indefinite imprisonment. The control of this arbitrary tribunal bound down and rendered impotent all the minor jurisdictions. Until this weight that hung upon the constitution should be taken off, there was literally no prospect of enjoying with security those civil privileges which it held forth.

§ 4. It cannot be too frequently repeated that no power of arbitrary detention has ever been known to our constitution since the charter obtained at Runnymede. The writ of habeas corpus has always been a matter of right. But, as may naturally be imagined, no right of the subject, in his relation to the crown, was preserved with greater difficulty. Not only the privy council in general arrogated to itself a power of discretionary imprisonment, into which no inferior court was to inquire, but commitments by a single councillor appear to have been frequent. These abuses gave rise to a remarkable complaint of the judges, which, though an authentic recognition of the privilege of personal freedom against such irregular and oppressive acts of individual ministers, must be admitted to leave by far too great latitude to the executive government, and to surrender, at least by implication from rather obscure language, a great part of the liberties which many statutes had confirmed. This is contained in a passage from Chief Justice Anderson's Reports.¹

§ 5. It was a natural consequence, not more of the high notions entertained of prerogative than of the very irregular and infrequent meeting of parliament, that an extensive and somewhat indefinite authority should be arrogated to proclamations of the king in council. It seems, by the proclamations issued under Elizabeth, that the crown claimed a sort of supplemental right of legislation, to perfect and carry into effect what the spirit of existing laws might require, as well as a paramount supremacy, called sometimes the king's absolute or sovereign power, which sanctioned commands beyond the legal prerogative, for the sake of public safety, whenever

¹ Printed in *NOTE* at the end of this chapter.

for all governments, during an actual rebellion, to proclaim martial law, or the suspension of civil jurisdiction. But it is of high importance to watch with extreme jealousy the disposition towards which most governments are prone, to introduce too soon, to extend too far, to retain too long, so perilous a remedy. In the fourteenth and fifteenth centuries the court of the constable and marshal, whose jurisdiction was considered as of a military nature, and whose proceedings were not according to the course of the common law, sometimes tried offenders by what was called martial law, but only, I believe, either during, or not long after, a serious rebellion. This tribunal fell into disuse under the Tudors. But Mary had executed some of those taken in Wyatt's insurrection without regular process, though their leader had his trial by a jury. Elizabeth, always hasty in passion and quick to punish, would have resorted to this summary course on a slighter occasion. One Peter Burchell, a fanatical puritan, and perhaps insane, conceiving that sir Christopher Hatton was an enemy to true religion, determined to assassinate him. But by mistake he wounded instead a famous seaman, captain Hawkins. For this ordinary crime the queen could hardly be prevented from directing him to be tried instantly by martial law. Her council, however (and this it is important to observe), resisted this illegal proposition with spirit and success. We have indeed a proclamation some years afterwards, declaring that such as brought into the kingdom or dispersed papal bulls, or traitorous libels against the queen, should with all severity be proceeded against by her majesty's lieutenants or their deputies by martial law, and suffer such pains and penalties as they should inflict; and that none of her said lieutenants or their deputies be any wise impeached, in body, lands, or goods, at any time hereafter, for anything to be done or executed in the punishment of any such offender, according to the said martial law, and the tenor of this proclamation, any law or statute to the contrary in any wise notwithstanding. This measure, though by no means constitutional, finds an apology in the circumstances of the time. It bears date the 1st of July, 1588, when within the lapse of a few days the vast armament of Spain might effect a landing upon our coasts; and prospectively to a crisis when the nation, struggling for life against an invader's grasp, could not afford the protection of law to domestic traitors. But it is an unhappy consequence of all deviations from the even course of law, that the forced acts of overruling necessity come to be distorted into precedents to serve the purposes of arbitrary power. No other measure of Elizabeth's reign can be compared, in point of violence and illegality, to a commission in July, 1595, directed to sir Thomas Wilford, whereby, upon no other allegation than that there had been of late "sundry great unlawful assemblies of a

number of lawless people in riotous sort, both in the city of London and the suburbs, for the suppression whereof (for that the insolency of many desperate offenders is such that they care not for any ordinary punishment by imprisonment) it was found necessary to have some such notable rebellious persons to be speedily suppressed by execution to death, according to the justice of martial law; he is appointed *provest-martial*, with authority, on notice by the magistrates, to attach and seize such notable rebellious and incorrigible offenders, and in the presence of the magistrates to execute them openly on the gallows.

This peremptory style of superseding the common law was a stretch of prerogative without an adequate parallel, so far as I know, in any former period. It is to be remarked that no tumults had taken place of any political character or of serious importance, some riotous apprentices only having committed a few disorders. But rather more than usual suspicion had been excited about the same time by the intrigues of the jesuits in favour of Spain, and the queen's advanced age had begun to renew men's doubts as to the succession. Circumstances of which we are ignorant, I do not question, gave rise to this extraordinary commission. The executive government in modern times has been invested with a degree of coercive power to maintain obedience of which our ancestors, in the most arbitrary reigns, had no practical experience. If we reflect upon the multitude of statutes enacted since the days of Elizabeth in order to restrain and suppress disorder, and, above all, on the prompt and certain aid that a disciplined army affords to our civil authorities, we may be inclined to think that it was rather the weakness than the vigour of her government which led to its inquisitorial watchfulness and harsh measures of prevention.

§ 8. Amidst so many infringements of the freedom of commerce and with so precarious an enjoyment of personal liberty, the English subject continued to pride himself in his immunity from taxation without consent of parliament. This privilege he had asserted, though not with constant success, against the rapacity of Henry VII. and the violence of his son. Nor was it ever disputed in theory by Elizabeth. She retained, indeed, notwithstanding the complaints of the merchants at her accession, a custom upon cloths, arbitrarily imposed by her sister, and laid one herself upon sweet wines. But she made no attempt at levying internal taxes. By dint of singular frugality she continued to steer the true course, so as to keep her popularity undiminished and her prerogative unimpaired—asking very little of her subjects' money in parliaments, and being hence enabled both to have long breathing times between their sessions, and to meet them without coaxing or wrangling, till, in the latter years of her reign, a foreign war and a rebellion in Ireland, joined

to a rapid depreciation in the value of money, rendered her demands somewhat higher. But she did not abstain from the ancient practice of sending privy-seals to borrow money of the wealthy. These were not considered as illegal, though plainly forbidden by the statute of Richard III.; for it was the fashion to set aside the authority of that act, as having been passed by an usurper. It is impossible to doubt that such loans were so far obtained by compulsion, that any gentleman or citizen of sufficient ability refusing compliance would have discovered that it was far better to part with his money than to incur the council's displeasure. We have indeed a letter from a lord mayor to the council, informing them that he had committed to prison some citizens for refusing to pay the money demanded of them. But the queen seems to have been punctual in their speedy repayment according to stipulation, a virtue somewhat unusual with royal debtors. Such loans were but an anticipation of her regular revenue, and no great hardship on rich merchants, who, if they got no interest for their money, were recompensed with knight-hoods and gracious words. And as Elizabeth incurred no debt till near the conclusion of her reign, it is probable that she never had borrowed more than she was sure to repay.

A letter quoted by Hume from lord Burleigh's papers, though not written by him, as the historian asserts, and somewhat obscure in its purport, appears to warrant the conclusion that he had revolved in his mind some project of raising money by a general contribution or benevolence from persons of ability, without purpose of repayment. This was also amidst the difficulties of the year 1569, when Cecil perhaps might be afraid of meeting parliament, on account of the factions leagued against himself. But as nothing further was done in this matter, we must presume that he perceived the impracticability of so unconstitutional a scheme.⁴

§ 9. Those whose curiosity has led them to somewhat more acquaintance with the details of English history under Elizabeth than the pages of Camden or Hume will afford, cannot but have been struck with the perpetual interference of men in power with matters of private concern. I am far from pretending to know how far the solicitations for a prime minister's aid and influence may extend at present. Yet one may think that he would hardly be employed, like Cecil, where he had no personal connection, in reconciling family quarrels, interceding with a landlord for his tenant, or persuading a rich citizen to bestow his daughter on a young lord. We are sure, at least, that he would not use the air of authority upon such occasions. The large collection of lord Burleigh's letters

⁴ Hume has exaggerated this, like other facts, in his very able, but partial, sketch of the constitution in Elizabeth's reign.

could not be raised by any other course, to propose statutes which were not binding without their consent, to consider of public grievances, and to procure their redress either by law or petition to the crown, were their acknowledged constitutional privileges, which no sovereign or minister ever pretended to deny. For this end liberty of speech and free access to the royal person were claimed by the speaker as customary privileges (though not quite, in his modern language, as undoubted rights) at the commencement of every parliament. But the house of commons in Elizabeth's reign contained men of a bold and steady patriotism, well read in the laws and records of old time, sensible to the dangers of their country and abuses of government, and conscious that it was their privilege and their duty to watch over the common weal. This led to several conflicts between the crown and parliament, wherein, if the former often asserted the victory, the latter sometimes kept the field, and was left on the whole a gainer at the close of the campaign.

The extant documents from which we draw our knowledge of constitutional history under the four preceding reigns are so scanty, that instances even of a successful parliamentary resistance to measures of the crown may have left no memorial. The debates of parliament are not preserved, and very little is to be gained from such histories as the age produced. The complete barrenness indeed of Elizabeth's chroniclers, Hollingshed and Thin, as to every parliamentary or constitutional information, speaks of itself the jealous tone of her administration. Camden, writing to the next generation, though far from an ingenuous historian, is somewhat less under restraint. This forced silence of history is much more to be suspected after the use of printing and the Reformation than in the ages when monks compiled annals in their convents, reckless of the censure of courts, because independent of their permission. Grosser ignorance of public transactions is undoubtedly found in the chronicles of the middle ages; but far less of that deliberate mendacity, or of that insidious suppression, by which fear, and flattery, and hatred, and the thirst of gain, have, since the invention of printing, corrupted so much of historical literature throughout Europe. We begin, however, to find in Elizabeth's reign more copious and unquestionable documents for parliamentary history. The regular journals indeed are partly lost; nor would those which remain give us a sufficient insight into the spirit of parliament without the aid of other sources. But a volume called Sir Simon D'Ewes's Journal, part of which is copied from a manuscript of Heywood Townsend, a member of all parliaments from 1580 to 1601, contains minutes of the most interesting debates as well as transactions, and for the first time renders us acquainted with the names of those who swayed an English house of commons.

§ 11. There was no peril more alarming to this kingdom during the queen's reign than the precariousness of her life—a thread whereon its tranquillity, if not its religion and independence, was suspended. Hence the commons felt it an imperious duty not only to recommend her to marry, but, when this was delayed, to solicit that some limitations of the crown might be enacted in failure of her issue. The former request she evaded without ever manifesting much displeasure, though not sparing a hint that it was a little beyond the province of parliament. Upon the last occasion indeed that it was preferred, namely, by the speaker in 1575, she gave what from any other woman must have appeared an assent, and almost a promise. But about declaring the succession she was always very sensible. Through a policy not perhaps entirely selfish, and certainly not erroneous on selfish principles, she was determined never to pronounce among the possible competitors for the throne. Least of all could she brook the intermeddling of parliament in such a concern. The commons first took up this business in 1562, when there had begun to be much debate in the nation about the opposite titles of the queen of Scots and lady Catherine Grey; and especially in consequence of a dangerous sickness the queen had just experienced, and which is said to have been the cause of summoning parliament. Their language is wary, praying her only by “proclamation of certainty already provided, if any such be,” alluding to the will of Henry VIII., “or else by limitations of certainty, if none be, to provide a most gracious remedy in this great necessity.” Elizabeth gave them a tolerably courteous answer, though not without some intimation of her dislike to this address. But at their next meeting, which was not till 1566, the hope of her own marriage having grown fainter, and the circumstances of the kingdom still more powerfully demanding some security, both houses of parliament united, with a boldness of which there had perhaps been no example for more than a hundred years, to overcome her repugnance. Some of her own council among the peers are said to have asserted in their places that the queen ought to be obliged to take a husband, or that a successor should be declared by parliament against her will. She was charged with a disregard to the state and to posterity. But this great princess wanted not skill and courage to resist this unusual importunity of parliament. The peers, who had forgotten their customary respectfulness, were excluded the presence-chamber till they made their submission. She prevailed on the commons, through her ministers who sat there, to join a request for her marriage with the more unpalatable alternative of naming her successor; and when this request was presented, gave them *this* assurance and a sort of assurance that their desires should by some means be fulfilled. When they continued to dwell on the same topic in their

speeches, and sent messages through her ministers, and at length a positive injunction through the speaker, that they should proceed no further in the business. The house, however, was not in a temper for such ready acquiescence as it sometimes displayed. Paul Wentworth, a bold and plain-spoken man, moved to know whether the queen's command and inhibition that they should no longer dispute of the matter of succession, were not against their liberties and privileges. This caused, as we are told, long debates, which do not appear to have terminated in any resolution. But, more probably having passed than we know at present, the queen, whose haughty temper and tenaciousness of prerogative were always within check of her discretion, several days after announced through the speaker that she revoked her two former commandments; "which revocation," says the journal, "was taken by the house most joyfully, with hearty prayer and thanks for the same." At the dissolution of this parliament, which was perhaps determined upon in consequence of their steadiness, Elizabeth alluded, in addressing them, with no small bitterness to what had occurred.

This is the most serious disagreement on record between the crown and the commons since the days of Richard II. and Henry IV. Doubtless the queen's indignation was excited by the nature of the subject her parliament ventured to discuss, still more than by her general disapprobation of their interference in matters of state. It was an endeavour to penetrate the great secret of her reign, in preserving which she conceived her peace, dignity, and personal safety to be bound up. And if, as Cecil seems justly to have thought, no limitations of the crown could at that time have been effected without much peril and inconvenience, we may find some apology for her warmth about their precipitation in a business which, even according to our present constitutional usage, it would naturally be for the government to bring forward. It is to be collected from Wentworth's motion, that to deliberate on subjects affecting the commonwealth was reckoned, by at least a large part of the house of commons, one of their ancient privileges and liberties. This was not one which Elizabeth, however she had yielded for the moment in revoking her prohibition, ever designed to concede to them. Such was her frugality, that, although she had remitted a subsidy granted in this session, alleging the very honourable reason that, knowing it to have been voted in expectation of some settlement of the succession, she would not accept it when that implied condition had not been fulfilled, she was able to pass five years without again convoking her people.

§ 12. A parliament met in April, 1571, when the lord keeper Bacon, in answer to the speaker's customary request for freedom of speech in the commons, said that "her majesty having experience

of late of some disorder and certain offences, which, though they were not punished, yet were they offences still, and so must be accounted, they would therefore do well to meddle with no matters of state but such as should be propounded unto them, and to occupy themselves in other matters concerning the commonwealth."

The commons so far attended to this intimation that no proceedings about the succession appear to have taken place in this parliament, except such as were calculated to gratify the queen. We may perhaps except a bill attainting the queen of Scots, which was rejected in the upper house. But they entered for the first time on a new topic, which did not cease for the rest of this reign to furnish matter of contention with their sovereign. The party called puritan, including such as charged abuses on the actual government of the church, as well as those who objected to part of its lawful discipline, had, not a little in consequence of the absolute exclusion of the catholic gentry, obtained a very considerable strength in the commons. But the queen valued her ecclesiastical supremacy more than any part of her prerogative. Next to the succession of the crown, it was the point she could least endure to be touched. The house had indeed resolved, upon reading a bill the first time for reformation of the Common Prayer, that petition be made to the queen's majesty for her licence to proceed in it before it should be farther dealt in. But Strickland, who had proposed it, was sent for to the council, and restrained from appearing again in his place, though put under no confinement. This was noticed as an infringement of their liberties. The ministers endeavoured to excuse his detention, as not intended to lead to any severity, nor occasioned by anything spoken in that house, but on account of his introducing a bill against the prerogative of the queen, which was not to be tolerated. And instances were quoted of animadversion on speeches made in parliament. But Mr. Yelverton maintained that all matters not treasonable, nor too much to the derogation of the imperial crown, were tolerable there, where all things came to be considered, and where there was such fulness of power as even the right of the crown was to be determined, which it would be high treason to deny. Princes were to have their prerogatives, but yet to be confined within reasonable limits. The queen could not of herself make laws, neither could she break them. This was the true voice of English liberty, not so new to men's ears as Hume has imagined, though many there were who would not forfeit the court's favour by uttering it. In the affair of Strickland it became so evident that the commons would at least address the queen to restore him, that she adopted the course her usual prudence indicated, and permitted his return to his house. But she took the reformation of ecclesiastical abuses out of their hands, sending word

that she would have some articles for that purpose executed by the bishops under her royal supremacy, and not dealt in by parliament. This did not prevent the commons from proceeding to send up some bills in the upper house, where, as was natural to expect, they fell to the ground.

This session is also remarkable for the first marked complaints against some notorious abuses which defaced the civil government of Elizabeth. A member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, and Mr. Bell said that licences granted by the crown and other abuses galled the people, intimating also that the subsidy should be accompanied by a redress of grievances. This occasion of introducing the subject, though strictly constitutional, was likely to cause displeasure. The speaker informed them a few days after of a message from the queen to spend little time in motions, and make no long speeches. And Bell, it appears, having been sent for by the council, came into the house "with such an amazed countenance, that it daunted all the rest," who for many days durst not enter on any matter of importance. It became the common whisper, that no one must speak against licences, lest the queen and council should be angry. And, at the close of the session, the lord keeper severely reprimanded those audacious, arrogant, and presumptuous members, who had called her Majesty's grants and prerogatives in question, meddling with matters neither pertaining to them, nor within the capacity of their understanding.

§ 13. The parliament of 1572 seemed to give evidence of their inheriting the spirit of the last by choosing Mr. Bell for their speaker.⁵ But very little of it appeared in their proceedings. In their first short session, chiefly occupied by the business of the queen of Scots, the most remarkable circumstances are the following. The commons were desirous of absolutely excluding Mary from inheriting the crown, and even of taking away her life, and had prepared bills with this intent. But Elizabeth, constant to her mysterious policy, made one of her ministers inform them that she would neither have the queen of Scots enabled or disabled to succeed, and willed that the bill respecting her should be drawn by her council: and that in the meantime the house should not enter on any speeches or arguments on that matter. Another circumstance worthy of note in this session is a signification, through the speaker, of her majesty's pleasure that no bills concerning religion should be received, unless they should be first considered and

⁵ Bell, I suppose, had reconciled himself to the court, which would have approved no speaker chosen without its recommendation. There was always an understanding

between this servant of the house and the government. Proofs or presumptions of this are not unfrequent.

approved by the clergy, and requiring to see certain bills touching rites and ceremonies that had been read in the house. The bills were accordingly ordered to be delivered to her, with a humble prayer that, if she should dislike them, she would not conceive an ill opinion of the house, or of the parties by whom they were preferred.

§ 14. The submissiveness of this parliament was doubtless owing to the queen's vigorous dealings with the last. At their next meeting, which was not till February 1575-6, Peter Wentworth, brother I believe of the person of that name before-mentioned (p. 130), broke out, in a speech of uncommon boldness, against her arbitrary encroachments on their privileges. The liberty of free speech, he said, had in the two last sessions been so many ways infringed, that they were in danger, while they contented themselves with the name, of losing and foregoing the thing. It was common for a rumour to spread through that house, "the queen likes or dislikes such a matter; beware what you do." Messages were even sometimes brought down either commanding or inhibiting, very injurious to the liberty of debate. He instanced that in the last session restraining the house from dealing in matters of religion; against which and against the prelates he inveighed with great acrimony. With still greater indignation he spoke of the queen's refusal to assent to the attainder of Mary; and, after surprising the house by the bold words, "none is without fault, no, not our noble queen, but has committed great and dangerous faults to herself," went on to tax her with ingratitude and unkindness to her subjects, in a strain perfectly free indeed from disaffection, but of more rude censure than any kings would put up with.

This direct attack upon the sovereign in matters relating to her public administration seems no doubt unparliamentary; though neither the rules of parliament in this respect, nor even the constitutional principle, were so strictly understood as at present. But it was part of Elizabeth's character to render herself extremely prominent, and, as it were, responsible in public esteem for every important measure of her government. It was difficult to consider a queen as acting merely by the advice of ministers who protested in parliament that they had laboured in vain to bend her heart to their counsels. The doctrine that some one must be responsible for every act of the crown was yet perfectly unknown; and Elizabeth would have been the last to adopt a system so inglorious to monarchy. But Wentworth had gone to a length which alarmed the house of commons. They judged it expedient to prevent an unpleasant interference by sequestering their member, and appointing a committee of all the privy councillors in the house to examine him. Wentworth declined their authority, till the

assured him that they sat as members of the commons and not as councillors. After a long examination, in which he not only behaved with intrepidity, but, according to his own statement, reduced them to confess the truth of all he advanced, they made a report to the house, who committed him to the Tower. He had lain there a month when the queen sent word that she remitted her displeasure towards him, and referred his enlargement to the house, who released him upon a reprimand from the speaker, and an acknowledgment of his fault upon his knees. In this commitment of Wentworth it can hardly be said that there was anything, as to the main point, by which the house sacrificed its acknowledged privileges. In later instances, and even in the reign of George I., members have been committed for much less indecent reflections on the sovereign.

The queen had no reason upon the whole to be ill-pleased with this parliament, nor was she in haste to dissolve it, though there was a long intermission of its sessions. The next was in 1581, when the chancellor, on confirming a new speaker, did not fail to admonish him that the house of commons should not intermeddle in anything touching her majesty's person or estate, or church government. They were supposed to disobey this injunction, and fell under the queen's displeasure, by appointing a public fast on their own authority, though to be enforced on none but themselves. This trifling resolution, which showed indeed a little of the puritan spirit, passed for an encroachment on the supremacy, and was only expiated by a humble apology. It is not till the month of February 1587-8, that the zeal for ecclesiastical reformation overcame in some measure the terrors of power, but with no better success than before. A Mr. Cope offered to the house, we are informed, a bill and a book, the former annulling all laws respecting ecclesiastical government then in force, and establishing a certain new form of common prayer contained in the latter. The speaker interposed to prevent this bill from being read, on the ground that her majesty had commanded them not to meddle in this matter. Several members however spoke in favour of hearing it read, and the day passed in debate on this subject. Before they met again the queen sent for the speaker, who delivered up to her the bill and book. Next time that the house sat Mr. Wentworth insisted that some questions of his proposing should be read. These queries were to the following purport: "Whether this council was not a place for any member of the same, freely and without control, by bill or speech, to utter any of the griefs of this commonwealth? Whether there be any council that can make, add, or diminish from the laws of the realm, but only this council of parliament? Whether it be not against the orders of this council to make any secret or matter

of weight, which is here in hand, known to the prince or any other, without consent of the house? Whether the speaker may overrule the house in any matter or cause in question? Whether the prince and state can continue and stand, and be maintained, without this council of parliament, not altering the government of the state?" These questions serjeant Pickering, the speaker, instead of reading them to the house, showed to a courtier, through whose means Wentworth was committed to the Tower. Mr. Cope, and those who had spoken in favour of his motion, underwent the same fate; and, notwithstanding some notice taken of it in the house, it does not appear that they were set at liberty before its dissolution, which ensued in three weeks.

Elizabeth, whose reputation for consistency, which haughty princes overvalue, was engaged in protecting the established hierarchy, must have experienced not a little vexation at the perpetual recurrence of complaints which the unpopularity of that order drew from every parliament. The speaker of that summoned in 1593 received for answer to his request of liberty of speech, that it was granted, "but not to speak every one what he listeth, or what cometh into his brain to utter; their privilege was ay or no. Wherefore, Mr. Speaker," continues the lord keeper Pickering, "her majesty's pleasure is, that if you perceive any idle heads which will not stick to hazard their own estates, which will meddle with reforming the church and transforming the commonwealth, and do exhibit such bills to such purpose, that you receive them not, until they be viewed and considered by those who it is fitter should consider of such things, and can better judge of them." It seems not improbable, that this admonition, which indeed is in no unusual style for this reign, was suggested by the expectation of some unpleasing debate. For we read that the very first day of the session, though the commons had adjourned on account of the speaker's illness, the unconquerable Peter Wentworth, with another member, presented a petition to the lord keeper, desiring "the lords of the upper house to join with them of the lower in imploring her majesty to entail the succession of the crown, for which they had already prepared a bill." This step, which may seem to us rather arrogant and unparliamentary, drew down, as they must have expected, the queen's indignation. They were summoned before the council, and committed to different prisons. A few days afterwards a bill for reforming the abuses of ecclesiastical courts was presented by M. rice, attorney of the court of wards, and underwent some discussion in the house. But the queen sent for the speaker, and expressly commanded that no bill touching matters of state or reformation of causes ecclesiastical should be exhibited; such should be offered, enjoining him on his allegiance

it. It was the custom at that time for the speaker to read and expound to the house all the bills that any member offered. Morice himself was committed to safe custody, from which he wrote a spirited letter to lord Burleigh, expressing his sorrow for having offended the queen, but at the same time his resolution "to strive," he says, "while his life should last, for freedom of conscience, public justice, and the liberties of his country." Some days after, a motion was made that, as some places might complain of paying subsidies, their representatives not having been consulted nor been present when they were granted, the house should address the queen to set their members at liberty. But the ministers opposed this, as likely to hurt those whose good was sought, her majesty being more likely to release them if left to her own gracious disposition. It does not appear however that she did so during the session, which lasted above a month.

§ 15. The admonitions not to abuse freedom of speech, which had become almost as much matter of course as the request for it, were repeated in the ensuing parliaments of 1597 and 1601. Nothing more remarkable occurs in the former of those sessions than an address to the queen against the enormous abuse of monopolies. The crown either possessed or assumed the prerogative of regulating almost all matters of commerce at its discretion. Patents to deal exclusively in particular articles, generally of foreign growth, but reaching in some instances to such important necessaries of life as salt, leather, and coal, had been lavishly granted to the courtiers, with little direct advantage to the revenue. They sold them to companies of merchants, who of course enhanced the price to the utmost ability of the purchaser. This business seems to have been purposely protracted by the ministers and the speaker, who, in this reign, was usually in the court's interests, till the last day of the session; when, in answer to his mention of it, the lord keeper said that the queen "hoped her dutiful and loving subjects would not take away her prerogative, which is the choicest flower in her garden, and the principal and head pearl in her crown and diadem; but would rather leave that to her disposition, promising to examine all patents, and to abide the touchstone of the law." This answer, though less stern than had been usual, was merely evasive: and in the session of 1601 a bolder and more successful attack was made on the administration than this reign had witnessed. The grievance of monopolies had gone on continually increasing; scarce any article was exempt from these oppressive patents. When the list of them was read over in the house, a member exclaimed, "Is not bread among the number?" The house seemed amazed: "Nay," said he, "if no remedy is found for these, bread will be there before the next parliament." Every tongue seemed now unloosed: each as if

emulously descending on the injuries of the place he represented. It was vain for the courtiers to withstand this torrent. Raleigh, no small gainer himself by some monopolies, after making what excuse he could, offered to give them up. Robert Cecil the secretary, and Bacon, talked loudly of the prerogative, and endeavoured at least to persuade the house that it would be fitter to proceed by petition to the queen than by a bill. But it was properly answered that nothing had been gained by petitioning in the last parliament. After four days of eager debate, and more heat than had ever been witnessed, this ferment was suddenly appeased by one of those well-timed concessions by which skilful princes spare themselves the mortification of being overcome. Elizabeth sent down a message that she would revoke all grants that should be found injurious by fair trial at law: and Cecil rendered the somewhat ambiguous generality of this expression more satisfactory by an assurance that the existing patents should all be repealed, and no more be granted. This victory filled the commons with joy, perhaps the more from being rather unexpected. They addressed the queen with rapturous and hyperbolical acknowledgments, to which she answered in an affectionate strain, glancing only with an oblique irony at some of those movers in the debate, whom in her earlier and more vigorous years she would have keenly reprimanded. She repeated this a little more plainly at the close of the session, but still with commendation of the body of the commons. So altered a tone must be ascribed partly to the growing spirit she perceived in her subjects, but partly also to those cares which clouded with listless melancholy the last scenes of her illustrious life.

The discontent that vented itself against monopolies was not a little excited by the increasing demands which Elizabeth was compelled to make upon the commons in all her latter parliaments. Though it was declared, in the preamble to the subsidy bill of 1593, that "these large and unusual grants, made to a most excellent princess on a most pressing and extraordinary occasion, should not at any time hereafter be drawn into a precedent," yet an equal sum was obtained in 1597, and one still greater in 1601, but money was always reluctantly given, and the queen's early frugality had accustomed her subjects to very low taxes; so that the debates on the supply in 1601, as handed down to us by Townsend, exhibit a lurking ill-humour which would find a better occasion to break forth.

§ 16. The house of commons, upon a review of Elizabeth's reign, was very far, on the one hand from exercising those constitutional rights which have long since belonged to it, or even those which by ancient precedent it might have claimed as its own; yet, on the other hand, was not quite so servile and submissive an assembly as

an artful historian has represented it. If many of its members were but creatures of power, if the majority was often too readily intimidated, if the bold and honest, but not very judicious, Wentworths were but feebly supported, when their impatience hurried them beyond their colleagues, there was still a considerable party, sometimes carrying the house along with them, who with patient resolution and inflexible aim recurred in every session to the assertion of that one great privilege which their sovereign contested, the right of parliament to inquire into and suggest a remedy for every public mischief or danger. It may be remarked that the ministers, such as Knollys, Hatton, and Robert Cecil, not only sat among the commons, but took a very leading part in their discussions: a proof that the influence of argument could no more be dispensed with than that of power. This, as I conceive, will never be the case in any kingdom where the assembly of the estates is quite subservient to the crown. Nor should we put out of consideration the manner in which the commons were composed. Sixty-two members were added at different times by Elizabeth to the representation, as well from places which had in earlier times discontinued their franchise, as from those to which it was first granted; a very large proportion of them petty boroughs, evidently under the influence of the crown or peerage. This had been the policy of her brother and sister, in order to counterbalance the country gentlemen, and find room for those dependents who had no natural interest to return them to parliament. The ministry took much pains with elections, of which many proofs remain. The house accordingly was filled with placemen, civilians, and common lawyers grasping at preferment. The slavish tone of these persons, as we collect from the minutes of D'Ewes, is strikingly contrasted with the manliness of independent gentlemen. And as the house was by no means very fully attended, the divisions, a few of which are recorded, running from 200 to 250 in the aggregate, it may be perceived that the court, whose followers were at hand, would maintain a formidable influence. But this influence, however pernicious to the integrity of parliament, is distinguishable from that exertion of almost absolute prerogative which Hume has assumed as the sole spring of Elizabeth's government, and would never be employed till some deficiency of strength was experienced in the other.

§ 17. D'Ewes has preserved a somewhat remarkable debate on a bill presented in the session of 1571, in order to render valid elections of non-resident burgesses. According to the tenor of the king's writ, confirmed by an act passed under Henry V., every city and borough was required to elect none but members of their own community. To this provision, as a seat in the commons' house grew more an object of general ambition, while many boroughs fell into

comparative decay, less and less attention had been paid ; till, the greater part of the borough representatives having become strangers, it was deemed, by some, expedient to repeal the ancient statute, and give a sanction to the innovation that time had wrought ; while others contended in favour of the original usage, and seemed anxious to restore its vigour. It was alleged that persons able and fit for so great an employment ought to be preferred without regard to their inhabitancy ; since a man could not be presumed to be the wiser for being a resident burgess : and that the whole body of the realm, and the service of the same, was rather to be respected than any private regard of place or person. This is a remarkable, and perhaps the earliest assertion, of an important constitutional principle, that each member of the house of commons is deputed to serve, not only for his constituents, but for the whole kingdom ; a principle which marks the distinction between a modern English parliament and such deputations of the estates as were assembled in several continental kingdoms ; a principle to which the house of commons is indebted for its weight and dignity, as well as its beneficial efficiency, and which none but the servile worshippers of the populace are ever found to gainsay. It is obvious that such a principle could never obtain currency, or even be advanced on any plausible ground, until the law for the election of resident burgesses had gone into disuse. The bill was committed by a majority ; but, as no further entry appears in the Journals, we may infer it to have dropped.

It may be mentioned, as not unconnected with this subject, that in the same session a fine was imposed on the borough of Westbury for receiving a bribe of four pounds from Thomas Long, “ being a very simple man and of small capacity to serve in that place ; ” and the mayor was ordered to repay the money. Long, however, does not seem to have been expelled. This is the earliest precedent on record for the punishment of bribery in elections.

§ 18. We shall find an additional proof that the house of commons under the Tudor princes, and especially Elizabeth, was not so feeble and insignificant an assembly as has been often insinuated, if we look at their frequent assertion and gradual acquisition of those peculiar authorities and immunities which constitute what is called privilege of parliament. Of these, the first, in order of time if not of importance, was their exemption from arrest on civil process during their session. Several instances occurred under the Plantagenet dynasty where this privilege was claimed and admitted ; but generally by means of a distinct act of parliament, or at least by a writ of privilege out of chancery. The house of commons for the first time took upon themselves to avenge their own injury in 1543, when the remarkable case of George Ferrers occurred. - This is

officer, and next to the Tower; and that upon his submission they inform the protector of their resolution to discharge him out of custody, recommending him to forgiveness as to his offence against the council, which, as they must have been aware, the privilege of parliament as to words spoken within its walls (if we are right in supposing such to have been the case) would extend to cover. The right of the house indeed to punish its own members for indecent abuse of the liberty of speech may be thought to result naturally from the king's concession of that liberty; and its right to preserve order in debate is plainly incident to that of debating at all.

A more remarkable assertion of the house's right to inflict punishment on its own members occurred in 1581, and, being much better known than those I have mentioned, has been sometimes treated as the earliest precedent. One Arthur Hall, a burgess for Grantham, was charged with having caused to be published a book against the present parliament, on account of certain proceedings in the last session, wherein he was privately interested, "not only reproaching some particular good members of the house, but also very much slanderous and derogatory to its general authority, power, and state, and prejudicial to the validity of its proceedings in making and establishing of laws." Hall was the master of Smalley, whose case has been mentioned above, and had so much incurred the displeasure of the house by his supposed privity to the fraud of his servant, that a bill was brought in and read a first time, the precise nature of which does not appear, but expressed to be against him and two of his servants. It seems probable, from these and some other passages in the entries that occur on this subject in the journal, that Hall in his libel had depreciated the house of commons as an estate of parliament, and especially in respect of its privileges, pretty much in the strain which the advocates of prerogative came afterwards to employ. Whatever share therefore personal resentment may have had in exasperating the house, they had a public quarrel to avenge against one of their members, who was led by pique to betray their ancient liberties. The vengeance of popular assemblies is not easily satisfied. Though Hall made a pretty humble submission, they went on, by a unanimous vote, to heap every punishment in their power upon his head. They expelled him, they imposed a fine of five hundred marks upon him, they sent him to the Tower until he should make a satisfactory retraction. At the end of the session he had not been released; nor was it the design of the commons that his imprisonment should then terminate; but their own dissolution, which ensued, put an end to the business. Hall sat in some later parliaments. This is the leading precedent, as far as records show, for the power of expulsion, which the commons have ever retained without dispute of those who would most

curtail their privileges. They exercised it with no small violence in the session of 1585 against the famous Dr. Parry, who, having spoken warmly against the bill inflicting the penalty of death on jesuits and seminary priests, as being cruel and bloody, the commons not only ordered him into the custody of the serjeant, for opposing a bill approved of by a committee, and directed the speaker to reprimand him upon his knees, but, on his failing to make a sufficient apology, voted him no longer a burgess of that house.

§ 19. The commons asserted in this reign, perhaps for the first time, another and most important privilege, the right of determining all matters relative to their own elections. Difficulties of this nature had in former times been decided in chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred it is impossible to pronounce, on account of the unsatisfactory state of the rolls and journals of parliament under Edward IV., Henry VII., and Henry VIII. One remarkable entry, however, may be found in the reign of Mary, when a committee is appointed "to inquire if Alexander Nowell, probendary of Westminster, may be of the house;" and it is declared next day by them that "Alexander Nowell, being prebendary in Westminster, and thereby having voice in the convocation house, cannot be a member of this house; and so agreed by the house, and the queen's writ to be directed for another burgess in his place." Nothing farther appears on record till in 1586 the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was, that the chancellor had issued a second writ for this county, on the ground of some irregularity in the first return, and a different person had been elected. Some notice having been taken of this matter in the commons, the speaker received orders to signify to them her majesty's displeasure that "the house had been troubled with a thing impertinent for them to deal with, and only belonging to the charge and office of the lord chancellor, whom she had appointed to confer with the judges about the returns for the county of Norfolk, and to act therein according to justice and right." The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns; who reported the whole case, with their opinion that those elected on the first writ should take their seats, declaring farther that they understood the chancellor and some of the judges to be of the same opinion; but that

"They had not thought it proper to inquire of the chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were

members thereof. And though they thought very reverently of the said lord chancellor and judges, and knew them to be competent judges in their places; yet in this case they took them not for judges in parliament in this house: and thereupon required that the members, if were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of this house, and not as allowed of by the said lord chancellor and judges. Which was agreed unto by the whole house."

This judicial control over their elections was not lost. A committee was appointed, in the session of 1589, to examine into sundry abuses of returns, among which is enumerated that some are returned for new places. And several instances of the house deciding on elections occur in subsequent parliaments.

This tenaciousness of their own dignity and privileges was shown in some disagreements with the upper house. The lords sent them a message in the session of 1593, reminding them of the queen's want of a supply, and requesting that a committee of conference might be appointed. This was accordingly done, and sir Robert Cecil reported from it that the lords would consent to *nothing less* than a grant of three entire subsidies, the commons having shown a reluctance to give more than two. But Mr. Francis Bacon said "he yielded to the subsidy, but disliked that this house should join with the upper house in granting it. For the custom and privilege of this house hath always been, first to make offer of the subsidies from hence, then to the upper house; except it were that they present a bill unto this house, with desire of our assent thereto and then to send it up again." But the house were now so much awakened to the privilege of originating money-bills, that, in spite of all the exertions of the court, the proposition for another conference with the lords was lost on a division by 217 to 128. It was by this opposition to the ministry in this session that Bacon, who acted perhaps full as much from pique towards the Cecils, and ambitious attachment to Essex, as from any real patriotism, so deeply offended the queen, that, with all his subsequent pliancy, he never fully reinstated himself in her favour.

§ 20. That the government of England was a monarchy bounded by law, far unlike the actual state of the principal kingdoms on the continent, appears to have been so obvious and fundamental a truth; that flattery itself did not venture directly to contravene it. Hume has laid hold of a passage in Raleigh's preface to his *History of the World* (written indeed a few years later than the age of Elizabeth), as if it fairly represented public opinion as to our form of government. Raleigh says that Philip II. "attempted to make himself not only an absolute monarch over the Netherlands, like unto the kings and sovereigns of England and France; but, Turk-like, to tread under his feet all their national and fundamental laws, privi-

leges, and ancient rights." But who, that was really desirous of establishing the truth, would have brought Raleigh into court as an unexceptionable witness on such a question? Unscrupulous ambition taught men in that age, who sought to win or regain the crown's favour, to falsify all law and fact in behalf of prerogative, as unblushingly as our modern demagogues exaggerate and distort the liberties of the people. The sentence itself, if designed to carry the full meaning that Hume assigns to it, is little better than an absurdity. For why were the rights and privileges of the Netherlands more fundamental than those of England? and by what logic could it be proved more Turk-like to impose the tax of the twentieth penny, or to bring Spanish troops into those provinces, in contravention of their ancient charters, than to transgress the Great Charter of this kingdom, with all those unrescinded statutes and those traditional unwritten liberties which were the ancient inheritance of its subjects? Or could any one, conversant in the slightest degree with the two countries, range in the same class of absolute sovereigns the kings of France and England? The arbitrary acts of our Tudor princes, even of Henry VIII., were trifling in comparison of the despotism of Francis I. and Henry II., who forced their most tyrannical ordinances down the throats of the parliament of Paris with all the violence of military usurpers. No permanent law had ever been attempted in England, nor any internal tax imposed, without consent of the people's representatives. No law in France had ever received such consent; nor had the taxes, enormously burthensome as they were in Raleigh's time, been imposed, for one hundred and fifty years past, by any higher authority than a royal ordinance. But did the English ever recognise, even by implication, the strange parallels which Raleigh has made for their government with that of France, and Hume with that of Turkey? The language adopted in addressing Elizabeth was always remarkably submissive. Hypocritical adulation was so much among the vices of that age, that the want of it passed for rudeness. Yet Onslow, speaker of the parliament of 1566, being then solicitor-general, in addressing the queen, says, "By our common law, although there be for the prince provided many princely prerogatives and royalties, yet it is not such as the prince can take money or other things, or do as he will at his own pleasure without order, but quietly to suffer his subjects to enjoy their own, without wrongful oppression; wherein other princes by their liberty do take as pleaseth them."

§ 21. There was unfortunately a notion very prevalent in the cabinet of Elizabeth, though it was not quite so broadly or at least so frequently promulgated as in the following reigns, that, besides the common prerogatives of the English crown, which were

admitted to have legal bounds, there was a kind of paramount sovereignty, which they denominated her absolute power, incident, as they pretended, to the abstract nature of sovereignty, and arising out of its primary office of preserving the state from destruction. This seemed analogous to the dictatorial power which might be said to reside in the Roman senate, since it could confer it upon an individual. And we all must, in fact, admit that self-preservation is the first necessity of commonwealths as well as persons, which may justify, in Montesquieu's poetical language, the veiling of the statues of liberty. Thus martial law is proclaimed during an invasion, and houses are destroyed in expectation of a siege. But few governments are to be trusted with this insidious plea of necessity, which more often means their own security than that of the people. Nor do I conceive that the ministers of Elizabeth restrained this pretended absolute power, even in theory, to such cases of overbearing exigency. It was the misfortune of the sixteenth century to see kingly power strained to the highest pitch in the two principal European monarchies. Charles V. and Philip II. had crushed and trampled the ancient liberties of Castile and Aragon. Francis I. and his successors, who found the work nearly done to their hands, had inflicted every practical oppression upon their subjects. These examples could not be without their effect on a government so unceasingly attentive to all that passed on the stage of Europe. Nor was this effect confined to the court of Elizabeth. A king of England, in the presence of absolute sovereigns, or perhaps of their ambassadors, must always feel some degree of that humiliation with which a young man, in check of a prudent father, regards the careless prodigality of the rich heirs with whom he associates. Good sense and elevated views of duty may subdue the emotion; but he must be above human nature who is insensible to the contrast.

There must be few of my readers who are unacquainted with the animated sketch that Hume has delineated of the English constitution under Elizabeth. It has been partly the object of the present chapter to correct his exaggerated outline; and nothing would be more easy than to point at other mistakes into which he has fallen through prejudice, through carelessness, or through want of acquaintance with law. His capital and inexcusable fault in everything he has written on our constitution is to have sought for evidence upon one side only of the question. Thus the remonstrance of the judges against arbitrary imprisonment by the council is infinitely more conclusive to prove that the right of personal liberty existed than the fact of its infringement can be to prove that it did not. There is something fallacious in the negative argument which he perpetually uses, that, because we find no

mention of any umbrage being taken at certain strains of prerogative, they must have been perfectly consonant to law. For if nothing of this could be traced, which is not so often the case as he represents it, we should remember that, even when a constant watchfulness is exercised by means of political parties and a free press, a nation is seldom alive to the transgressions of a prudent and successful government. The character which on a former occasion I have given of the English constitution under the house of Plantagenet may still be applied to it under the line of Tudor, that it was a monarchy greatly limited by law, but retaining much power that was ill-calculated to promote the public good, and swerving continually into an irregular course, which there was no restraint adequate to correct. It may be added that the practical exercise of authority seems to have been less frequently violent and oppressive, and its legal limitations better understood, in the reign of Elizabeth than for some preceding ages; and that sufficient indications had become distinguishable before its close, from which it might be gathered that the seventeenth century had arisen upon a race of men in whom the spirit of those who stood against John and Edward was rekindled with a less partial and a steadier warmth.

NOTE TO CHAPTER V.

REMONSTRANCE OF JUDGES
AGAINST ILLEGAL COMMITMENTS
(p. 121).

'To the Rt. hon: our very good lords Sir Chr. Hatton, of the honourable order of the garter knight, and chancellor of England, and Sir W. Cecill of the hon: order of the garter knight, Lord Burleigh, lord high treasurer of England, — We her majesty's justices, of both benches, and barons of the exchequer, do desire your lordships that by your good means such order may be taken that her highness's subjects may not be committed or detained in prison, by commandment of any nobleman or counsellor, against the laws of the realm, to the grievous charges and oppression of her majesty's said subjects: Or else help us to have access to her majesty, to be suitors unto her highness for the same; for divers have been imprisoned for suing ordinary actions, and suits at the common law, until they will leave the same, or against their wills put their matter to order, although some time it be after judgment and accusation.

Item: Others have been committed and detained in prison upon such commandment against the law; and upon the queen's writ in that behalf, no cause sufficient hath been certified or returned.

"Item: Some of the parties so committed and detained in prison after they have, by the queen's writ, been lawfully discharged in court, have been aftsoones recommitted to prison in secret places, and not in common and ordinary known prisons, as the Marshalsea, Fleet, King's Bench, Gatehouse, nor the custodio of any sheriff, so as, upon complaint made for their delivery, the queen's court cannot learn to whom to award her majesty's writ, without which justice cannot be done.

"Item: Divers sergeants of London and officers have been many times committed to prison for lawful execution of her majesty's writs out of the King's Bench, Common Pleas, and other courts, to their great charges and oppression, whereby they are

put in such fear as they dare not execute the queen's process.

"Item: Divers have been sent for by pursuivants for private causes, some of them dwelling far distant from London, and compelled to pay to the pursuivants great sums of money against the law, and have been committed to prison till they would release the lawful benefit of their suits, judgments, or executions for remedie, in which behalf we are almost daily called upon to minister justice according to law, whereunto we are bound by our office and oath.

"And whereas it pleased your lordships to will divers of us to set down when a prisoner sent to custody by her majesty, her council, or some one or two of them, is to be detained in prison, and not to be delivered by her majesty's courts or judges:

"We think that, if any person shall be committed by her majesty's special commandment, or by order from the council-board, or for treason touching her majesty's person [a word of five letters follows, illegible to me], which causes being generally returned into any court, is good cause for the same court to leave the person committed in custody.

"But if any person shall be committed for any other cause, then the same ought specially to be returned."

This paper bears the original signatures of eleven judges. It has no date, but is endorsed 5 June, 1591. In the printed report it is said to have been delivered in Easter term 34 Eliz., that is, in 1592. The chancellor Hatton, whose name is mentioned, died in November, 1591; so that, if there is no mistake, this must have been delivered a second time, after undergoing the revision of the judges. And in fact the differences are far too material to have proceeded from accidental carelessness in transcription. The latter copy is fuller; and on the whole more perspicuous, than the manuscript I have followed; but in one or two places it will be better understood by comparison with it.

CHAPTER VI.

ON THE ENGLISH CONSTITUTION UNDER JAMES I.

§ 1. Quiet Accession of James. § 2. Question of his Title to the Crown. Legitimacy of the Earl of Hertford's Issue. § 3. Early unpopularity of the King. Conduct towards the Puritans. § 4. Parliament convoked by an irregular Proclamation. Question of Fortescue and Goodwin's Election. § 5. Shirley's Case of Privilege. § 6. Complaints of Grievances. § 7. Commons' Vindication of themselves. § 8. Sessions of 1605, 1606. Union with Scotland debated. Continual Bickerings between the Crown and Commons. § 9. Impositions on Merchandize without Consent of Parliament. § 10. Remonstrances against these in Session of 1610. § 11. Doctrine of King's absolute Power inculcated by Clergy. *Articuli Cleri*. § 12. Renewed Complaints of the Commons. Negotiation for giving up the Feudal Revenue. Dissolution of Parliament. § 13. Character of James. § 14. Death of Lord Salisbury. Foreign Politics of the Government. § 15. Lord Coke's Alienation from the Court. Illegal Proclamations. § 16. Means resorted to in order to avoid the Meeting of Parliament. § 17. Parliament of 1614. Undertakers. It is dissolved without passing a single Act. § 18. Benevolences. Prosecution of Peacham. § 19. Dispute about the Jurisdiction of the Court of Chancery. § 20. Case of Commendams. § 21. Arbitrary Proceedings in Star Chamber. § 22. Arabella Stuart. § 23. Somerset and Overbury. § 24. Sir Walter Raleigh. § 25. Parliament of 1621. Proceedings against Mompesson and Lord Bacon. § 26. Violence in the Case of Floyd. § 27. War in the Palatinate. § 28. Disagreement between the King and Commons. Their Dissolution after a strong Remonstrance. § 29. Marriage Treaty with Spain. § 30. Parliament of 1624. § 31. Impeachment of Middlesex. § 32. Result of the Struggle between James and the Parliament.

§ 1. It might afford an illustration of the fallaciousness of political speculations to contrast the hopes and inquietudes that agitated the minds of men concerning the inheritance of the crown during Elizabeth's lifetime, while not less than fourteen titles were idly or mischievously reckoned up, with the perfect tranquillity which accompanied the accession of her successor. The house of Suffolk, whose claim was legally indisputable, if we admit the testament of Henry VIII. to have been duly executed, appear, though no public inquiry had been made into that fact, to have lost ground in popular opinion, partly through an unequal marriage of lord Beauchamp with a private gentleman's daughter, but still more from a natural disposition to favour the hereditary line rather than the capricious disposition of a sovereign long since dead, as soon as it became consistent with the preservation of the reformed faith. Leicester once hoped, it is said, to place his brother-in-law, the earl of Huntingdon, descended from the duke of Clarence, upon the throne, but this pretension had been entirely forgotten. 'The more'

and violent of the catholic party, after the death of Mary, entertaining little hope that the king of Scots would abandon the principles of his education, sought to gain support to a pretended title in the king of Spain, or his daughter the infanta, who afterwards married the archduke Albert, governor of the Netherlands. Others, abhorring so odious a claim, looked to Arabella Stuart daughter of the earl of Lennox, younger brother of James's father, and equally descended from the stock of Henry VII., sustaining her manifest defect of primogeniture by her birth within the realm, according to the principle of law that excluded aliens from inheritance. But this principle was justly deemed inapplicable to the crown. Clement VIII., who had no other view than to secure the re-establishment of the catholic faith in England, and had the judgment to perceive that the ascendency of Spain would neither be endured by the nation nor permitted by the French king, favoured this claim of Arabella, who, though apparently of the reformed religion was rather suspected at home of wavering in her faith, and entertained a hope of marrying her to the cardinal Farnese, brother of the duke of Parma. Considerations of public interest, however, unequivocally pleaded for the Scottish line; the extinction of long sanguinary feuds, and the consolidation of the British Empire. Elizabeth herself, though by no means on terms of sincere friendship with James, and harassing him by intrigues with his subjects to the close of her life, seems to have always designed that he should inherit her crown. And the general expectation of what was to follow, as well from conviction of his right as from the impracticability of any effectual competition, had so thoroughly paved the way that the council's proclamation of the king of Scots excited no more commotion than that of an heir apparent.

§ 2. The popular voice in favour of James was undoubtedly raised in consequence of a natural opinion that he was the lawful heir to the throne. But this was only according to vulgar notions of right which respect hereditary succession as something indefeasible. In point of fact, it is at least very doubtful whether James I. were a legitimate sovereign, according to the sense which that word ought properly to bear. The house of Stuart no more came in by a clear title than the house of Brunswick; by such a title, I mean, as the statute laws of this kingdom had recognised. No private man could have recovered an acre of land without proving a better right than they could make out to the crown of England. What, then, had James to rest upon? What renders it absurd to call him and his children usurpers? He had that which the flatterers of his family most affected to disdain—the will of the people; not certainly expressed in regular suffrage or declared election, but unanimously and voluntarily ratifying that which in itself could

surely give no right, the determination of the late queen's council to proclaim his accession to the throne.

It is probable that what has been just said may appear rather paradoxical to those who have not considered this part of our history, yet it is capable of satisfactory proof. This proof consists of four propositions: 1. That a lawful king of England, with the advice and consent of parliament, may make statutes to limit the inheritance of the crown, as shall seem fit; 2. That a statute passed in the 35th year of king Henry VIII. enabled that prince to dispose of the succession by his last will signed with his own hand; 3. That Henry executed such a will, by which, in default of issue from his children, the crown was entailed upon the descendants of his younger sister, Mary duchess of Suffolk, before those of Margaret queen of Scots; 4. That such descendants of Mary were living at the decease of Elizabeth.

Of these propositions, the two former can require no support; the first being one that it would be perilous to deny, and the second asserting a notorious fact. A question has, however, been raised with respect to the third proposition; for though the will of Henry, now in the chapter-house at Westminster, is certainly authentic, and is attested by many witnesses, it has been doubted whether the signature was made with his own hand, as required by the act of parliament. In the reign of Elizabeth it was asserted by the queen of Scots' ministers that, the king being at the last extremity, some one had put a stamp for him to the instrument. It is true that he was in the latter part of his life accustomed to employ a stamp instead of making his signature. Many impressions of this are extant; but it is evident on the first inspection not only that the presumed autographs in the will (for there are two) are not like these impressions, but that they are not the impressions of any stamp, the marks of the pen being very clearly discernible. It is more difficult to pronounce that they may not be feigned, but such is not the opinion of some who are best acquainted with Henry's handwriting; and what is still more to the purpose, there is no pretence for setting up such a possibility, when the story of the stamp, as to which the partisans of Mary pretended to adduce evidence, appears so clearly to be a fabrication. We have, therefore, every reasonable ground to maintain that Henry did duly execute a will postponing the Scots line to that of Suffolk.

The fourth proposition is in itself undeniable. There were descendants of Mary duchess of Suffolk, by her two daughters, Frances, second duchess of Suffolk, and Eleanor countess of Cumberland. A story had, indeed, been circulated that Charles Brandon, duke of Suffolk, was already married to a lady of the name of Mortimer at the time of his union with the king's sister. But this

circumstance seems to be sufficiently explained in the treatise of Hales. It is somewhat more questionable from which of his two daughters we are to derive the hereditary stock. This depends on the legitimacy of lord Beauchamp, son of the earl of Hertford by Catherine Grey. I have mentioned in another place the process before a commission appointed by Elizabeth, which ended in declaring that their marriage was not proved, and that their cohabitation had been illicit. The parties alleged themselves to have been married clandestinely in the earl of Hertford's house by a minister whom they had never before seen, and of whose name they were ignorant, in the presence only of a sister of the earl then deceased. This entire absence of testimony, and the somewhat improbable nature of the story, at least in appearance, may still, perhaps, leave a shade of doubt as to the reality of the marriage. On the other hand, it was unquestionable that their object must have been a legitimate union; and such a hasty and furtive ceremony as they asserted to have taken place, while it would, if sufficiently proved, be completely valid, was necessary to protect them from the queen's indignation. They were examined separately upon oath to answer a series of the closest interrogatories, which they did with little contradiction, and a perfect agreement in the main; nor was any evidence worth mentioning adduced on the other side; so that unless the rules of the ecclesiastical law are scandalously repugnant to common justice, their oaths entitled them to credit on the merits of the case.

The descent from the younger daughter of Mary Brandon, Eleanor, who married the earl of Cumberland, is subject to no difficulties. She left an only daughter, married to the earl of Derby, from whom the claim devolved again upon females, and seems to have attracted less notice during the reign of Elizabeth than some others much inferior in plausibility. If any should be of opinion that no marriage was regularly contracted between the earl of Hertford and lady Catherine Grey, so as to make their children capable of inheritance, the title to the crown, resulting from the statute of 35 H. VIII. and the testament of that prince, will have descended at the death of Elizabeth on the issue of the countess of Cumberland, the youngest daughter of the duchess of Suffolk, lady Frances Keyes, having died without issue. In neither case could the house of Stuart have a lawful claim.

There is much reason to believe that the consciousness of this defect in his parliamentary title put James on magnifying, still more than from his natural temper he was prone to do, the inherent rights of primogenitary succession as something indefeasible by the legislature; a doctrine which, however it might suit the schools of divinity, was in diametrical opposition to our

statutes. Through the servile spirit of those times, however, it made a rapid progress; and, interwoven by cunning and bigotry with religion, became a distinguishing tenet of the party who encouraged the Stuarts to subvert the liberties of this kingdom. In James's proclamation on ascending the throne he set forth his hereditary right in pompous and perhaps unconstitutional phrases. It was the first measure of parliament to pass an act of recognition, acknowledging that immediately on the decease of Elizabeth "the imperial crown of the realm of England did, by inherent birthright and lawful and undoubted succession, descend and come to his most excellent majesty, as being lineally, justly, and lawfully next and sole heir of the blood royal of this realm." The will of Henry VIII. it was tacitly agreed by all parties to consign to oblivion: and this most wisely, not on the principles which seem rather too much insinuated in this act of recognition, but on such substantial motives of public expediency as it would have shown an equal want of patriotism and of good sense for the descendants of the house of Suffolk to have withstood.

§ 3. The new king's character, notwithstanding the vicinity of Scotland, seems to have been little understood by the English at his accession. But he was not long in undeceiving them, if it be true that his popularity had vanished away before his arrival in London. The kingdom was full of acute wits and skilful politicians, quick enough to have seen through a less unguarded character than that of James. It was soon manifest that he was unable to wield the sceptre of the great princess whom he ridiculously affected to despise, so as to keep under that rising spirit which might perhaps have grown too strong even for her control. He committed an important error in throwing away the best opportunity that had offered itself for healing the wounds of the church of England. In his way to London the malecontent clergy presented to him what was commonly called the Millenary Petition, as if signed by 1000 ministers, though the real number was not so great. This petition contained no demand inconsistent with the established hierarchy. James, however, who had not unnaturally taken an extreme disgust at the presbyterian clergy of his native kingdom, by whom his life had been perpetually harassed, showed no disposition to treat these petitioners with favour. The bishops had promised him an obsequiousness to which he had been little accustomed, and a zeal to enhance his prerogative which they afterwards too well displayed. His measures towards the nonconformist party had evidently been resolved upon before he summoned a few of their divines to the famous conference at Hampton Court. In the accounts that we read of this meeting we are alternately struck with wonder at the indecent and partial behaviour of the king, and

at the abject baseness of the bishops, mixed, according to the custom of servile natures, with insolence towards their opponents. It was easy for a monarch and eighteen churchmen to claim the victory, be the merits of their dispute what they might, over four abashed and intimidated adversaries. A very few alterations were made in the church-service after this conference, but not of such moment as to reconcile probably a single minister to the established discipline. The king soon afterwards put forth a proclamation requiring all ecclesiastical and civil officers to do their duty by enforcing conformity, and admonishing all men not to expect nor attempt any further alteration in the public service. And he had already strictly enjoined the bishops to proceed against all their clergy who did not observe the prescribed order; a command which Bancroft, who about this time followed Whitgift in the primacy, did not wait to have repeated. But the most enormous outrage on the civil rights of these men was the commitment to prison of ten among those who had presented the Millenary Petition; the judges having declared in the star-chamber that it was an offence finable at discretion, and very near to treason and felony, as it tended to sedition and rebellion. By such beginnings did the house of Stuart indicate the course it would steer.

An entire year elapsed, chiefly on account of the unhealthiness of the season in London, before James summoned his first parliament. It might perhaps have been more politic to have chosen some other city; for the length of this interval gave time to form a disadvantageous estimate of his administration, and to alienate beyond recovery the puritanical party. Libels were already in circulation reflecting with a sharpness never before known on the king's personal behaviour, which presented an extraordinary contrast to that of Elizabeth. James, however, little heeded the popular voice, satisfied with the fulsome and preposterous adulation of his court, and intent on promulgating certain maxims concerning the dignity and power of princes, which he had already announced in his discourse on the True Law of Free Monarchies, printed some years before in Scotland.

§ 4. In the proclamation for calling together his first parliament, the king, after dilating, as was his favourite practice, on a series of rather common truths in very good language, charges all persons interested in the choice of knights for the shire to select them out of the principal knights or gentlemen within the county; and for the burgesses that choice be made of men of sufficiency and discretion, without desire to please parents and friends that often speak for their children or kindred; avoiding persons noted in religion for their superstitious blindness one way, or for their turbulent humour other ways. We do command, he says, that no

bankrupts or outlaws be chosen, but men of known good behaviour and sufficient livelihood. The sheriffs are charged not to direct a writ to any ancient town being so ruined that there are not residents sufficient to make such choice, and of whom such lawful election may be made. All returns are to be filed in chancery, and if any be found contrary to this proclamation the same to be rejected as unlawful and insufficient, and the place to be fined for making it; and any one elected contrary to the purport, effect, and true meaning of this proclamation, to be fined and imprisoned.

Such an assumption of control over parliamentary elections was a glaring infringement of those privileges which the house of commons had been steadily and successfully asserting in the late reign. An opportunity very soon occurred of contesting this important point. At the election for the county of Buckingham sir Francis Goodwin had been chosen in preference to sir John Fortescue, a privy councillor, and the writ returned into chancery. Goodwin having been some years before outlawed, the return was sent back to the sheriff, as contrary to the late proclamation; and, on a second election, sir John Fortescue was chosen. This matter, being brought under the consideration of the house of commons a very few days after the opening of the session, gave rise to their first struggle with the new king. It was resolved, after hearing the whole case, and arguments by members on both sides, that Goodwin was lawfully elected and returned, and ought to be received. The first notice taken of this was by the lords, who requested that this might be discussed in a conference between the two houses before any other matter should be proceeded in. The commons returned for answer that they conceived it not according to the honour of the house to give account of any of their proceedings. The lords replied, that, having acquainted his majesty with the matter, he desired there might be a conference thereon between the two houses. Upon this message the commons came to a resolution that the speaker with a numerous deputation of members should attend his majesty and report the reasons of their proceedings in Goodwin's case. Two conferences with the king ensued, and the latter at last suggested that both Goodwin and Fortescue should be set aside by issuing a new writ. This compromise was joyfully accepted by the greater part of the commons, after the dispute had lasted nearly three weeks. They have been considered as victorious, upon the whole, in this contest, though they apparently fell short in the result of what they had obtained some years before. But no attempt was ever afterwards made to dispute their exclusive jurisdiction.

§ 5. The commons were engaged during this session in the defence of another privilege, to which they annexed perhaps a disproportionate importance. Sir Thomas Shirley, a member,

having been taken in execution on a private debt before their meeting, and the warden of the Fleet prison refusing to deliver him up, they were at a loss how to obtain his release. The warden, though committed by the house to a dungeon in the Tower, continued obstinate, conceiving that by releasing his prisoner he should become answerable for the debt. They were evidently reluctant to solicit the king's interference; but, aware at length that their own authority was insufficient, "the vice-chamberlain," according to a memorandum in the journals, "was privately instructed to go to the king and humbly desire that he would be pleased to command the warden, on his allegiance, to deliver up sir Thomas; not as petitioned for by the house, but as if himself thought it fit, out of his own gracious judgment." By this stratagem, if we may so term it, they saved the point of honour and recovered their member. The warden's apprehensions, however, of exposing himself to an action for the escape gave rise to a statute which empowers the creditor to sue out a new execution against any one who shall be delivered by virtue of his privilege of parliament, after that shall have expired, and discharges from liability those out of whose custody such persons shall be delivered. This is the first legislative recognition of privilege. The most important part of the whole is a proviso subjoined to the act, "That nothing therein contained shall extend to the diminishing of any punishment to be hereafter, by censure in parliament, inflicted upon any person who hereafter shall make or procure to be made any such arrest as is aforesaid." The right of commitment, in such cases at least, by a vote of the house of commons, is here unequivocally maintained.

§ 6. It is not necessary to repeat the complaints of ecclesiastical abuses preferred by this house of commons, as by those that had gone before them. James, by siding openly with the bishops, had given alarm to the reforming party. A code of new canons had recently been established in convocation with the king's assent, obligatory perhaps upon the clergy, but tending to set up an unwarranted authority over the whole nation; imposing oaths and exacting securities in certain cases from the laity, and aiming at the exclusion of nonconformists from all civil rights. Against these canons, as well as various other grievances, the commons remonstrated in a conference with the upper house, but with little immediate effect. They made a more remarkable effort in attacking some public mischiefs of a temporal nature, which, though long the theme of general murmurs, were closely interwoven with the ancient and undisputed prerogatives of the crown. Complaints were uttered, and innovations projected, by the commons of 1604, which Elizabeth would have met with an angry message, and perhaps visited with punish-

ment on the proposers. James, however, was not entirely averse to some of the projected alterations, from which he hoped to derive a pecuniary advantage. The two principal grievances were purveyance and the incidents of military tenure. The former had been restrained by not less than thirty-six statutes, as the commons assert in a petition to the king; in spite of which the impressing of carts and carriages, and the exaction of victuals for the king's use, at prices far below the true value, and in quantity beyond what was necessary, continued to prevail under authority of commissions from the board of green cloth, and was enforced, in case of default or resistance, by imprisonment under their warrant. The purveyors, indeed, are described as living at free quarters upon the country, felling woods without the owners' consent, and commanding labour with little or no recompense. Purveyance was a very ancient topic of remonstrance; but both the inadequate revenues of the crown, and a supposed dignity attached to this royal right of spoil, had prevented its abolition from being attempted. But the commons seemed still more to trench on the pride of our feudal monarchy when they proposed to take away guardianship in chivalry; that lucrative tyranny, bequeathed by Norman conquerors, the custody of every military tenant's estate until he should arrive at twenty-one, without accounting for the profits. This, among other grievances, was referred to a committee, in which Bacon took an active share. They obtained a conference on this subject with the lords, who advised to drop the matter for the present, as somewhat unseasonable in the king's first parliament.

In the midst of these testimonies of dissatisfaction with the civil and ecclesiastical administration, the house of commons had not felt much willingness to greet the new sovereign with a subsidy. No demand had been made upon them, far less any proof given of the king's exigencies; and they doubtless knew by experience that an obstinate determination not to yield to any of their wishes would hardly be shaken by a liberal grant of money. They had even passed the usual bill granting tonnage and poundage for life, with certain reservations that gave the court offence, and which apparently they afterwards omitted. But there was so little disposition to do anything farther, that the king sent a message to express his desire that the commons would not enter upon the business of a subsidy, and assuring them that he would not take unkindly their omission. By this artifice, which was rather transparent, he avoided the not improbable mortification of seeing the proposal rejected.

§ 7. The king's discontent at the proceedings of this session, which he seems to have rather strongly expressed in some speech to the commons that has not been recorded, gave rise to a very remarkable vindication, prepared by the committee at the house's

command, and entitled 'A Form of Apology and Satisfaction to be delivered to his Majesty,' though such may not be deemed the most appropriate title. It contains a full and pertinent justification of all those proceedings at which James had taken umbrage, and asserts, with respectful boldness and in explicit language, the constitutional rights and liberties of parliament. If the English monarchy had been reckoned as absolute under the Plantagenets and Tudors as Hume has endeavoured to make it appear, the commons of 1604 must have made a surprising advance in their notions of freedom since the king's accession. Adverting to what they call the misinformation openly delivered to his majesty in three things; namely, that their privileges were not of right, but of grace only, renewed every parliament on petition; that they are no court of record, nor yet a court that can command view of records; that the examination of the returns of writs for knights and burgesses is without their compass, and belonging to the chancery: they maintain on the contrary:

"1. That their privileges and liberties are their right and inheritance, no less than their very lands and goods; 2. That they cannot be withheld from them, denied, or impaired, but with apparent wrong to the whole state of the realm; 3. That their making request, at the beginning of a parliament, to enjoy their privilege, is only an act of manners, and does not weaken their right; 4. That their house is a court of record, and has been ever so esteemed; 5. That there is not the highest standing court in this land that ought to enter into competition, either for dignity or authority, with this high court of parliament, which with his majesty's royal assent, gives law to other courts, but from other courts receives neither laws nor orders; 6. That the house of commons is the sole proper judge of return of all such writs, and the election of all such members as belong to it, without which the freedom of election were not entire."

They vindicate their endeavours to obtain redress of religious and public grievances:

"Your Majesty would be misinformed," they tell him, "if any man should deliver that the kings of England have any absolute power in themselves, either to alter religion, which God defend should be in the power of any mortal man whatsoever, or to make any laws concerning the same, otherwise than as in temporal causes, by consent of parliament. We have and shall at all times by our oaths acknowledge that your majesty is sovereign lord and supreme governor in both."

Such was the voice of the English commons in 1604, at the commencement of that great conflict for their liberties which is measured by the line of the house of Stuart. But it is not certain that this apology was ever delivered to the king, though he seems to allude to it in a letter written to one of his ministers about the same time.

§ 8. The next session (1605), which is remarkable on account of the conspiracy of some desperate men to blow up both houses of parliament with gunpowder on the day of their meeting, did not produce much worthy of our notice. A bill to regulate, or probably to suppress, purveyance was thrown out by the lords. The commons sent up another bill to the same effect, which the upper house rejected without discussion, by a rule then perhaps first established, that the same bill could not be proposed twice in one session. They voted a liberal subsidy, which the king, who had reigned three years without one, had just cause to require. For though he had concluded a peace with Spain soon after his accession, yet the late queen had left a debt of 400,000*l.*, and other charges had fallen on the crown. But the bill for this subsidy lay a good while in the house of commons, who came to a vote that it should not pass till their list of grievances was ready to be presented. No notice was taken of these till the next session, beginning in November, 1606, when the king returned an answer to each of the sixteen articles in which matters of grievance were alleged. Of these the greater part refer to certain grants made to particular persons in the nature of monopolies; the king either defending these in his answer, or remitting the parties to the courts of law to try their legality. The principal business of this third session, as it had been of the last, was James's favourite scheme of a perfect union between England and Scotland. It may be collected, though this was never explicitly brought forward, that his views extended to a legislative incorporation. Hume, ever prone to eulogize this monarch at the expense of his people, while he bestows merited praise on his speech in favour of the union, which is upon the whole a well-written and judicious performance, charges the parliament with prejudice, reluctance, and obstinacy. Yet if the commons, while both the theory of our own constitution was so unsettled, and its practice so full of abuse, did not precipitately give in to schemes that might create still further difficulty in all questions between the crown and themselves, we may justly consider it as an additional proof of their wisdom and public spirit. Their slow progress, however, in this favourite measure, which, though they could not refuse to entertain it, they endeavoured to defeat by interposing delays and impediments, gave much offence to the king, which he expressed in a speech to the two houses, with the haughtiness, but not the dignity, of Elizabeth. He threatened them to live alternately in the two kingdoms, or to keep his court at York; and alluded, with peculiar acrimony, to certain speeches made in the house, wherein probably his own fame had not been spared.

It is most probable, as experience had shown, that such a demonstration of displeasure from Elizabeth would have ensured

the repentant submission of the commons. But, within a few years of the most unbroken tranquillity, there had been one of those changes of popular feeling which a government is seldom observant enough to watch. Two springs had kept in play the machine of her administration, affection and fear; attachment arising from the sense of dangers endured, and glory achieved, for her people, tempered, though not subdued, by the dread of her stern courage and vindictive rigour. For James not a particle of loyal affection lived in the hearts of the nation, while his easy and pusillanimous, though choleric, disposition had gradually diminished those sentiments of apprehension which royal frowns used to excite. The commons, after some angry speeches, resolved to make known to the king, through the speaker, their desire that he would listen to no private reports, but take his information of the house's meaning from themselves; that he would give leave to such persons as he had blamed for their speeches to clear themselves in his hearing; and that he would by some gracious message make known his intention that they should deliver their opinions with full liberty, and without fear. The speaker next day communicated a slight but civil answer he had received from the king, importing his wish to preserve their privileges, especially that of liberty of speech. This, however, did not prevent his sending a message a few days afterwards, commenting on their debates, and on some clauses they had introduced into the bill for the abolition of all hostile laws.

The ministry betrayed, in a still more pointed manner, their jealousy of any interference on the part of the commons with the conduct of public affairs in a business of a different nature. The pacification concluded with Spain in 1604, very much against the general wish, had neither removed all grounds of dispute between the governments, nor allayed the dislike of the nations. Spain advanced in that age the most preposterous claims to an exclusive navigation beyond the tropic, and to the sole possession of the American continent; while the English merchants, mindful of the lucrative adventures of the queen's reign, could not be restrained from trespassing on the rich harvest of the Indies by contraband and sometimes piratical voyages. These conflicting interests led of course to mutual complaints of maritime tyranny and fraud; neither likely to be ill-founded, where the one party was as much distinguished for the despotic exercise of vast power, as the other by boldness and cupidity. It was the prevailing bias of the king's temper to keep on friendly terms with Spain, or rather to court her with undisguised and impolitic partiality. But this so much thwarted the prejudices of his subjects, that no part, perhaps, of his administration had such a disadvantageous effect on his popularity. The merchants presented to the commons, in this session of

1607, a petition upon the grievances they sustained from Spain, entering into such a detail of alleged cruelties as was likely to exasperate that assembly. Nothing, however, was done for a considerable time, when, after receiving the report of a committee on the subject, the house prayed a conference with the lords. They, who acted in this and the preceding session as the mere agents of government, intimated in their reply that they thought it an unusual matter for the commons to enter upon, and took time to consider about a conference. After some delay this was granted, and sir Francis Bacon reported its result to the lower house. The earl of Salisbury managed the conference on the part of the lords. The tenor of his speech, as reported by Bacon, is very remarkable. After discussing the merits of the petition, and considerably extenuating the wrongs imputed to Spain, he adverted to the circumstance of its being presented to the commons. The crown of England was invested, he said, with an absolute power of peace and war; and inferred, from a series of precedents which he vouched, that petitions made in parliament, intermeddling with such matters, had gained little success; that great inconveniences must follow from the public debate of a king's designs, which, if they take wind, must be frustrated; and that, if parliaments have ever been made acquainted with matter of peace or war in a general way, it was either when the king and council conceived that it was material to have some declaration of the zeal and affection of the people, or else when they needed money for the charge of a war, in which case they should be sure enough to hear of it; that the lords would make a good construction of the commons' desire, that it sprang from a forwardness to assist his majesty's future resolutions, rather than a determination to do that wrong to his supreme power which haply might appear to those who were prone to draw evil inferences from their proceedings. Several precedents indeed might have been opposed to those of the earl of Salisbury, wherein the commons, especially under Richard II. and Henry VI., had assumed a right of advising on matters of peace and war. But the more recent usage of the constitution did not warrant such an interference. It was, however, rather a bold assertion that they were not the proper channel through which public grievances, or those of so large a portion of the community as the merchants, ought to be represented to the throne.

§ 9. During the interval of two years and a half that elapsed before the commencement of the next session, a decision had occurred in the court of exchequer which threatened the entire overthrow of our constitution. It had always been deemed the indispensable characteristic of a limited monarchy, however irregular and inconsistent might be the exercise of some prerogatives, that no

money could be raised from the subject without the consent of the estates. This essential principle was settled in England, after much contention, by the statute entitled *Confirmatio Chartarum*, in the 25th year of Edward I. More comprehensive and specific in its expression than the Great Charter of John, it abolishes all "aids, tasks, and prises, unless by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prises due and accustomed;" the king explicitly renouncing the custom he had lately set on wool. Thus the letter of the statute and the history of the times conspire to prove that impositions on merchandise at the ports, to which alone the word prises was applicable, could no more be levied by the royal prerogative after its enactment, than internal taxes upon landed or moveable property, known in that age by the appellations of aids and tallages. But as the former could be assessed with great ease, and with no risk of immediate resistance, and especially as certain ancient customs were preserved by the statute, so that a train of fiscal officers, and a scheme of regulations and restraints upon the export and import of goods became necessary, it was long before the sovereigns of this kingdom could be induced constantly to respect this part of the law. Hence several remonstrances from the commons under Edward III. against the maletolls or unjust exactions upon wool, by which, if they did not obtain more than a promise of effectual redress, they kept up their claim, and perpetuated the recognition of its justice, for the sake of posterity. They became powerful enough to enforce it under Richard II., in whose time there is little clear evidence of illegal impositions; and from the accession of the house of Lancaster it is undeniable that they ceased altogether. The grant of tonnage and poundage for the king's life, which from the time of Henry V. was made in the first parliament of every reign, might perhaps be considered as a tacit compensation to the crown for its abandonment of these irregular extortions.

Henry VII., the most rapacious, and Henry VIII., the most despotic, of English monarchs, did not presume to violate this acknowledged right. The first who had again recourse to this means of enhancing the revenue was Mary, who, in the year 1557, set a duty upon cloths exported beyond seas, and afterwards another on the importation of French wines. The former of these was probably defended by arguing that there was already a duty on wool; and if cloth, which was wool manufactured, could pass free, there would be a fraud on the revenue. The merchants, however, did not acquiesce in this arbitrary imposition, and, as soon as Elizabeth's accession gave hopes of a restoration of English government, they petitioned to be released from this burthen. The administration, however, would not release this duty, which con-

tinned to be paid under Elizabeth. She also imposed one upon sweet wines. We read of no complaint in parliament against this novel taxation; but it is alluded to by Bacon in one of his tracts during the queen's reign, as a grievance alleged by her enemies. He defends it, as laid only on a foreign merchandise, and a delicacy which might be forborne.

James had imposed a duty of five shillings per hundredweight on currants, over and above that of two shillings and sixpence, which was granted by the statute of tonnage and poundage. Bates, a Turkey merchant, having refused payment, an information was exhibited against him in the exchequer. Judgment was soon given for the crown. The courts of justice, it is hardly necessary to say, did not consist of men conscientiously impartial between the king and the subject; some corrupt with hope of promotion, many more fearful of removal, or awe-struck by the frowns of power. The speeches of chief baron Fleming, and of baron Clark, the only two that are preserved in Lane's Reports, contain propositions still worse than their decision, and wholly subversive of all liberty.

"The king's power," it was said, "is double—ordinary and absolute; and these have several laws and ends. That of the ordinary is for the profit of particular subjects, exercised in ordinary courts, and called common law, which cannot be changed in substance without parliament. The king's absolute power is applied to no particular person's benefit, but to the general safety; and this is not directed by the rules of common law, but more properly termed policy and government, varying according to his wisdom for the common good; and all things done within those rules are lawful. The matter in question is matter of state, to be ruled according to policy by the king's extraordinary power. All customs (duties so called) are the effects of foreign commerce; but all affairs of commerce and all treaties with foreign nations belong to the king's absolute power; he therefore who has power over the cause, must have it also over the effect. The seaports are the king's gates, which he may open and shut to whom he pleases."

The ancient customs on wine and wool are asserted to have originated in the king's absolute power, and not in a grant of parliament; a point, whether true or not, of no great importance, if it were acknowledged that many statutes had subsequently controlled this prerogative. But these judges impugned the authority of statutes derogatory to their idol. That of 45 E. III., c. 4, that no new imposition should be laid on wool or leather, one of them maintains, did not bind the king's successors; for the right to impose such duties was a principal part of the crown of England, which the king could not diminish. They extolled the king's grace in permitting the matter to be argued, commenting at the same time on the insolence shown in disputing so undeniable a claim. Nor could any judges be more peremptory in resisting an attempt to

overthrow the most established precedents than were these barons of king James's exchequer in giving away those fundamental liberties which were the inheritance of every Englishman.

The immediate consequence of this decision was a book of rates published in July, 1608, under the authority of the great seal imposing heavy duties upon almost all merchandise. But the judgment of the court of exchequer did not satisfy men jealous of the crown's encroachments. The imposition on currants had been already noticed as a grievance by the house of commons in 1606. But the king answered, that the question was in a course for legal determination; and the commons themselves, which is worthy of remark, do not appear to have entertained any clear persuasion that the impost was contrary to law.

§ 10. In the session, however, which began in February, 1610, they had acquired new light by sifting the legal authorities, and, instead of submitting their opinions to the courts of law, which were in truth little worthy of such deference, were the more provoked to remonstrate against the novel usurpation those servile men had endeavoured to prop up. Lawyers, as learned probably as most of the judges, were not wanting in their ranks. The illegality of impositions was shown in two elaborate speeches by Hakewill and Yelverton. And the country gentlemen, who, though less deeply versed in precedents, had too good sense not to discern that the next step would be to levy taxes on their lands, were delighted to find that there had been an old English constitution not yet abrogated, which would bear them out in their opposition. When the king therefore had intimated by a message, and afterwards in a speech, his command not to enter on the subject, couched in that arrogant tone of despotism which this absurd prince affected, they presented a strong remonstrance against this inhibition.

"The policy and constitution of this your kingdom (they say) appropriates unto the kings of this realm, with the assent of the parliament, as well the sovereign power of making laws, as that of taxing, or imposing upon the subjects' goods or merchandises, as may not, without their consents, be altered or changed. * * * We, therefore, your majesty's most humble commons assembled in parliament, following the example of this worthy case of our ancestors, and out of a duty of those for whom we serve, finding that your majesty, without advice or consent of parliament, hath lately, in time of peace, set both greater impositions, and far more in number, than any your noble ancestors did ever in time of war, have, with all humility, presumed to present this most just and necessary petition unto your majesty, that all impositions set without the assent of parliament may be quite abolished and taken away; and that your majesty, in imitation likewise of your noble progenitors, will be pleased that a law be made during this session of parliament, to declare that all impositions set or to be set upon your people, their goods or merchandises, save only by common consent in parliament, are and shall be void "

They proceeded accordingly, after a pretty long time occupied in searching for precedents, to pass a bill taking away impositions; which, as might be anticipated, did not obtain the concurrence of the upper house.

§ 11. The commons had reason for their apprehensions. This doctrine of the king's absolute power beyond the law had become current with all who sought his favour, and especially with the high church party. The convocation had in 1606 drawn up a set of canons, denouncing as erroneous a number of tenets hostile in their opinion to royal government. These canons, though never authentically published till a later age, could not have been secret. They consist of a series of propositions or paragraphs, to each of which an anathema of the opposite error is attached; deducing the origin of government from the patriarchal regimen of families, to the exclusion of any popular choice. Passive obedience in all cases without exception to the established monarch is inculcated.

The real aim of the clergy in thus enormously enhancing the pretensions of the crown was to gain its sanction and support for their own. Schemes of ecclesiastical jurisdiction, hardly less extensive than had warmed the imagination of Becket, now floated before the eyes of his successor Bancroft. He had fallen indeed upon evil days, and perfect independence on the temporal magistrate could no longer be attempted; but he acted upon the refined policy of making the royal supremacy over the church, which he was obliged to acknowledge, and professed to exaggerate, the very instrument of its independence upon the law. The favourite object of the bishops in this age was to render their ecclesiastical jurisdiction, no part of which had been curtailed in our hasty reformation, as unrestrained as possible by the courts of law. These had been wont, down from the reign of Henry II., to grant writs of prohibition whenever the spiritual courts transgressed their proper limits; to the great benefit of the subject, who would otherwise have lost his birthright of the common law, and been exposed to the defective, not to say iniquitous and corrupt, procedure of the ecclesiastical tribunals. But the civilians, supported by the prelates, loudly complained of these prohibitions, which seem to have been much more frequent in the latter years of Elizabeth and the reign of James than in any other period. Bancroft accordingly presented to the star-chamber, in 1605, a series of petitions in the name of the clergy, which lord Coke has denominated *Articuli Cleri*, by analogy to some similar representations of that order under Edward II. In these it was complained that the courts of law interfered by continual prohibitions with a jurisdiction as established and as much derived from the king as their own, either in cases which were clearly within that jurisdiction's limits, or on the slightest suggestion of some matter

belonging to the temporal court. It was hinted that the whole course of granting prohibitions was an encroachment of the king's bench and common pleas, and that they could regularly issue out of chancery. To each of these articles of complaint, extending to twenty-five, the judges made separate answers, in a rough and some might say, a rude style, but pointed and much to the purpose, vindicating in every instance their right to take cognizance of every collateral matter springing out of an ecclesiastical suit, and repelling the attack upon their power to issue prohibitions as a strange presumption. Nothing was done, nor, thanks to the firmness of the judges, could be done, by the council in this respect. For the clergy had begun by advancing that the king's authority was sufficient to reform what was amiss in any of his own courts, all jurisdiction spiritual and temporal, being annexed to his crown. But it was positively and repeatedly denied, in reply, that anything less than an act of parliament could alter the course of justice established by law. This effectually silenced the archbishop, who knew how little he had to hope from the commons. By the pretensions made for the church in this affair he exasperated the judges, who had been quite sufficiently disposed to second all rigorous measures against the puritan ministers, and aggravated that jealousy of the ecclesiastical courts which the common lawyers had long entertained.

§ 12. It is the evident policy of every administration, in dealing with the house of commons, to humour them in everything that touches their pride and tenaciousness of privilege, never attempting to protect any one who incurs their displeasure by want of respect. This seems to have been understood by the earl of Salisbury, the first English minister who, having long sat in the lower house, had become skilful in those arts of management which his successors have always reckoned so essential a part of their mystery. He wanted a considerable sum of money to defray the king's debts, which, on his coming into the office of lord treasurer after lord Buckhurst's death, he had found to amount to 1,300,000*l.*, about one-third of which was still undischarged. The ordinary expense also surpassed the revenue by 81,000*l.* It was impossible that this could continue without involving the crown in such embarrassments as would leave it wholly at the mercy of parliament. Cecil therefore devised the scheme of obtaining a perpetual yearly revenue of 200,000*l.*, to be granted once for all by parliament; and, the better to incline the house to this high and extraordinary demand, he promised in the king's name to give all the redress and satisfaction in his power for any grievances they might bring forward.

This offer on the part of government seemed to make an opening for a prosperous adjustment of the differences which had subsisted ever since the king's accession. The commons, accordingly, pre-

poning the business of a subsidy, to which the courtiers wished to give priority, brought forward a host of their accustomed grievances in ecclesiastical and temporal concerns. The most essential was undoubtedly that of impositions, which they sent up a bill to the lords, as above mentioned, to take away. They next complained of the ecclesiastical high commission court, which took upon itself to fine and imprison, powers not belonging to their jurisdiction, and passed sentences without appeal, interfering frequently with civil rights, and in all its procedure neglecting the rules and precautions of the common law. They dwelt on the late abuse of proclamations assuming the character of laws. They proceeded, after a list of illegal proclamations, to enumerate other grievances, such as the delay of courts of law in granting writs of prohibition and habeas corpus, the jurisdiction of the council of Wales over the four bordering shires of Gloucester, Worcester, Hereford, and Salop,¹ some patents of monopolies, and a tax under the name of a licensee recently set upon victuallers. The king answered these remonstrances with civility, making, as usual, no concession with respect to the ecclesiastical commission, and evading some of their other requests; but promising that his proclamations should go no farther than was warranted by law, and that the royal licensees to victuallers should be revoked.

It appears that the commons, deeming these enumerated abuses contrary to law, were unwilling to chaffer with the crown for the restitution of their actual rights. There were, however, parts of the prerogative which they could not dispute, though galled by the burthen—the incidents of feudal tenure and purveyance. A negotiation was accordingly commenced and carried on for some time with the court for abolishing both these, or at least the former. The king, though he refused to part with tenure by knight's service, which he thought connected with the honour of the monarchy, was induced, with some real or pretended reluctance, to give up its lucrative incidents, relief, primer seisin, and wardship, as well as the right of purveyance. But material difficulties recurred in the prosecution of this treaty. After a good deal of haggling, Salisbury delivered the king's final determination to accept of 200,000*l.* per annum, which

¹ The court of the council of Wales was erected by statute 31 H. VIII., c. 26, for that principality and its marches, with authority to determine such causes and matters as should be assigned to them by the king, "as heretofore hath been accustomed and used;" which implies a previous existence of some such jurisdiction. It was pretended that the four counties of Hereford, Worcester, Gloucester, and Salop were included within their authority as marches

of Wales. This was controverted in the reign of James by the inhabitants of these counties; and on reference to the twelve judges, according to lord Coke, it was resolved that they were ancient English shires, and not within the jurisdiction of the council of Wales; "and yet," he subjoins, "the commission was not after reformed in all points as it ought to have been." The complaints of this enactment had begun in the time of Elizabeth.

the commons voted to grant as a full composition for abolishing the right of wardship and dissolving the court that managed it, and for taking away all purveyance; with some further concessions, and particularly that the king's claim to lands should be bound by sixty years' prescription. Two points yet remained, of no small moment; namely, by what assurance they could secure themselves against the king's prerogative, so often held up by court lawyers as something uncontrollable by statute, and by what means so great an imposition should be levied; but the consideration of these was reserved for the ensuing session, which was to take place in October. They were prorogued in July till that month, having previously granted a subsidy for the king's immediate exigencies. On their meeting again, the lords began the business by requesting a conference with the other house about the proposed contract. But it appeared that the commons had lost their disposition to comply. Time had been given them to calculate the disproportion of the terms, and the perpetual burthen that lands held by knights' service must endure. They had reflected, too, on the king's prodigal humour, the rapacity of the Scots in his service, and the probability that this additional revenue would be wasted without sustaining the national honour, or preventing future applications for money. They saw that, after all the specious promises by which they had been led on, no redress was to be expected as to those grievances they had most at heart; that the ecclesiastical courts would not be suffered to lose a jot of their jurisdiction; that illegal customs were still to be levied at the outports; that proclamations were still to be enforced like acts of parliament. Great coldness accordingly was displayed in their proceedings, and in a short time this distinguished parliament, after sitting nearly seven years, was dissolved by proclamation.

§ 13. It was now perhaps too late for the king, by any reform or concession, to regain that public esteem which he had forfeited. Deceived by an overweening opinion of his own learning, which was not inconsiderable, of his general abilities, which were far from contemptible, and of his capacity for government, which was very small, and confirmed in this delusion by the disgraceful flattery of his courtiers and bishops, he had wholly overlooked the real difficulties of his position—as a foreigner, rather distantly connected with the royal stock, and as a native of a hostile and hateful kingdom come to succeed the most renowned of sovereigns, and to grasp a sceptre which deep policy and long experience had taught her admirably to wield. The people were proud of martial glory; he spoke only of the blessing of the peacemakers: they abhorred the court of Spain; he sought its friendship: they asked indulgence for scrupulous consciences; he would bear no deviation from conformity:

they writhed under the yoke of the bishops, whose power he thought necessary to his own—they were animated by a persecuting temper towards the catholics; he was averse to extreme rigour: they had been used to the utmost frugality in dispensing the public treasure; he squandered it on unworthy favourites: they had seen at least exterior decency of morals prevail in the queen's court; they now heard only of its dissoluteness and extravagance: they had imbibed an exclusive fondness for the common law as the source of their liberties and privileges; his churchmen and courtiers, but none more than himself, talked of absolute power and the imprescriptible rights of monarchy.

§ 14. James lost in 1611 his son prince Henry, and in 1612 the lord treasurer Salisbury. He showed little regret for the former, whose high spirit and great popularity afforded a mortifying contrast, especially as the young prince had not taken sufficient pains to disguise his contempt for his father. Salisbury was a very able man, to whom, perhaps, his contemporaries did some injustice. The ministers of weak and wilful monarchs are made answerable for the mischiefs they are compelled to suffer, and gain no credit for those which they prevent. Cecil had made personal enemies of those who had loved Essex or admired Raleigh, as well as those who looked invidiously on his elevation. It was believed that the desire shown by the house of commons to abolish the feudal wardships proceeded in a great measure from the circumstance that this obnoxious minister was master of the court of wards, an office both lucrative and productive of much influence. But he came into the scheme of abolishing it with a readiness that did him credit. His chief praise, however, was his management of continental relations. The only minister of James's cabinet who had been trained in the councils of Elizabeth, he retained some of her jealousy of Spain and of her regard for the protestant interests. The court of Madrid, aware both of the king's pusillanimity and of his favourable dispositions, affected a tone in the conferences held in 1604 about a treaty of peace which Elizabeth would have resented in a very different manner. On this occasion he not only deserted the United Provinces, but gave hopes to Spain that he might, if they persevered in their obstinacy, take part against them. Nor have I any doubt that his blind attachment to that power would have precipitated him into a ruinous connexion, if Cecil's wisdom had not influenced his councils. During this minister's life our foreign politics seem to have been conducted with as much firmness and prudence as his master's temper would allow; the mediation of England was of considerable service in bringing about the great truce of twelve years between Spain and Holland in 1609; and in the dispute which sprang up soon afterwards concerning the succession to the duchies of Cleves and Juliers, a dispute

which threatened to mingle in arms the catholic and protestant parties throughout Europe, our councils were full of a vigour and promptitude unusual in this reign, nor did anything but the assassination of Henry IV. prevent the appearance of an English army in the Netherlands. It must at least be confessed that the king's affairs, both at home and abroad, were far worse conducted after the death of the Earl of Salisbury than before.

§ 15. The administration found an important disadvantage, about this time, in a sort of defection of sir Edward Coke (more usually called lord Coke), chief-justice of the king's bench, from the side of prerogative. He was a man of strong though narrow intellect; confessedly the greatest master of English law that had ever appeared, but proud and overbearing, a flatterer and tool of the court till he had obtained his ends, and odious to the nation for the brutal manner in which, as attorney-general, he had behaved towards sir Walter Raleigh on his trial. In raising him to the post of chief-justice the council had of course relied on finding his unfathomable stores of precedent subservient to their purposes. But, soon after his promotion, Coke, from various causes, began to steer a more independent course. He was little formed to endure a competitor in his own profession, and lived on ill terms both with the lord chancellor Egerton, and with the attorney-general, sir Francis Bacon. The latter had long been his rival and enemy. Discouraged by Elizabeth, who, against the importunity of Essex, had raised Coke over his head, that great and aspiring genius was now high in the king's favour. The chief-justice affected to look down on one as inferior to him in knowledge of our municipal law, as he was superior in all other learning and in all the philosophy of jurisprudence. And the mutual enmity of these illustrious men never ceased till each in his turn satiated his revenge by the other's fall. Coke was also much offended by the attempts of the bishops to emancipate their ecclesiastical courts from the civil jurisdiction. But as the king and some of the council rather favoured these episcopal pretensions, they were troubled by what they deemed his obstinacy, and discovered more and more that they had to deal with a most impracticable spirit.

It would be invidious to exclude from the motives that altered lord Coke's behaviour in matters of prerogative his real affection for the laws of the land, which novel systems, broached by the churchmen and civilians, threatened to subvert. In *Bates's* case, which seems to have come in some shape extra-judicially before him, he had delivered an opinion in favour of the king's right to impose at the outports; but so cautiously guarded, and bottomed on such different grounds from those taken by the barons of the exchequer, that it could not be cited in favour of any fresh encroachments.

He now performed a great service to his country. The practice of issuing proclamations, by way of temporary regulation indeed, but interfering with the subject's liberty, in cases unprovided for by parliament, had grown still more usual than under Elizabeth. Coke was sent for to attend some of the council, who might perhaps have reason to conjecture his sentiments, and it was demanded whether the king, by his proclamation, might prohibit new buildings about London, and whether he might prohibit the making of starch from wheat. This was during the session of parliament in 1610, and with a view to what answer the king should make to the commons' remonstrance against these proclamations. Coke replied that it was a matter of great importance, on which he would confer with his brethren. This was agreed to by the council and three judges, besides Coke, appointed to consider it. They resolved that the king, by his proclamation, cannot create any offence which was not one before; for then he might alter the law of the land in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. It was also resolved that the king hath no prerogative but what the law of the land allows him. But the king, for the prevention of offences, may by proclamation admonish all his subjects that they keep the laws and do not offend them, upon punishment to be inflicted by the law; and the neglect of such proclamation, Coke says, aggravates the offence. Lastly, they resolved that, if an offence be not punishable in the star-chamber, the prohibition of it by proclamation cannot make it so. After this resolution, the report goes on to remark, no proclamation imposing fine and imprisonment was made.

§ 16. By the abrupt dissolution of parliament James was left nearly in the same necessity as before: their subsidy being by no means sufficient to defray his expenses, far less to discharge his debts. He had frequently betaken himself to the usual resource of applying to private subjects, especially rich merchants, for loans of money. These loans, which bore no interest, and for the repayment of which there was no security, disturbed the prudent citizens, especially as the council used to solicit them with a degree of importunity at least bordering on compulsion. Forced loans or benevolences were directly prohibited by an act of Richard III., whose laws, however the court might sometimes throw a slur upon his usurpation, had always been in the statute-book. After the dissolution of 1610, James attempted as usual to obtain loans; but the merchants, grown bolder with the spirit of the times, refused him the accommodation. He had recourse to another method of raising money, unprecedented, I believe, before his reign, though long practised in France, the sale of honours. He sold several peerages for considerable sums, and created a new order of hero-

original debt. The enormous fines imposed by the star-chamber, though seldom, I believe, enforced to their utmost extent, must have considerably enriched the exchequer. It is said by Carte that some Dutch merchants paid fines to the amount of 133,000*l.* for exporting gold coin. But still greater profit was hoped from the requisition of that more than half involuntary contribution, miscalled a benevolence. It began by a subscription of the nobility and principal persons about the court. Letters were sent written to the sheriffs and magistrates, directing them to call on people of ability. It had always been supposed doubtful whether the statute of Richard III. abrogating "exactions, called benevolences," should extend to voluntary gifts at the solicitation of the crown. The language used in that act certainly implies that the pretended benevolences of Edward's reign had been extorted against the subjects' will; yet if positive violence were not employed, it seems difficult to find a legal criterion by which to distinguish the effects of willing loyalty from those of fear or shame. Lord Coke is said to have at first declared that the king could not solicit a benevolence from his subjects, but to have afterwards retracted his opinion and pronounced in favour of its legality. To this second opinion he adheres in his Reports. While this business was pending, Mr. Oliver St. John wrote a letter to the mayor of Marlborough, explaining his reasons for declining to contribute, founded on the several statutes which he deemed applicable, and on the impropriety of particular men opposing their judgment to the commons in parliament, who had refused to grant any subsidy. This argument, in itself exasperating, he followed up by somewhat blunt observations on the king. His letter came under the consideration of the star-chamber, where the offence having been severely descanted upon by the attorney-general, Mr. St. John was sentenced to a fine of 5000*l.* and to imprisonment during pleasure.

Coke, though still much at the council board, was regarded with increasing dislike on account of his uncompromising humour. This he had occasion to display in perhaps the worst and most tyrannical act of king James's reign, the prosecution of one Peacham, a minister in Somersetshire, for high treason. A sermon had been found in this man's study (it does not appear what led to the search), never preached, nor, if judge Coke is right, intended to be preached, containing such sharp censures upon the king, and invectives against the government, as, had they been published, would have amounted to a seditious libel. But common sense revolted at construing it into treason under the statute of Edward III., as a compassing of the king's death. James, however, took it up with indecent eagerness. Peacham was put to the rack, and examined upon various interrogatories, as it is expressed by secretary Winwood,

"before torture, in torture, between torture, and after torture." Nothing could be drawn from him as to any accomplices, nor any explanation of his design in writing the sermon; which was probably but an intemperate effusion, so common among the puritan clergy. It was necessary therefore to rely on this as the overt act of treason. Aware of the difficulties that attended this course, the king directed Bacon previously to confer with the judges of the king's bench, one by one, in order to secure their determination for the crown. Coke objected that "such particular, and, as he called it, auricular taking of opinions was not according to the custom of this realm." The other three judges, having been tampered with, agreed to answer such questions concerning the case as the king might direct to be put to them; yielding to the sophism that every judge was bound by his oath to give counsel to his majesty. The chief-justice continued to maintain his objection to this separate closeting of judges; yet, finding himself abandoned by his colleagues, consented to give answers in writing, which seem to have been merely evasive. Peacham was brought to trial, and found guilty, but not executed, dying in prison a few months after.

§ 19. It was not long before the intrepid chief-justice incurred again the council's displeasure. This will require, for the sake of part of my readers, some little previous explanation. The equitable jurisdiction, as it is called, of the court of chancery appears to have been derived from that extensive judicial power which, in early times, the king's ordinary council had exercised. The chancellor, as one of the highest officers of state, took a great share in the council's business; and when it was not sitting, he had a court of his own, with jurisdiction in many important matters, out of which process to compel appearance of parties might at any time emanate. It is not unlikely therefore that redress, in matters beyond the legal province of the chancellor, was occasionally given through the paramount authority of this court. We find the council and the chancery named together in many remonstrances of the commons against this interference with private rights, from the time of Richard II. to that of Henry VI. It was probably in the former reign that the chancellor began to establish systematically his peculiar restraining jurisdiction. This originated in the practice of feoffments to uses, by which the feoffee, who had legal seisin of the land, stood bound by private engagement to suffer another, called the cestui que use, to enjoy its use and possession. Such fiduciary estates were well known to the Roman jurists, but inconsistent with the feudal genius of our law. The courts of justice gave no redress, if the feoffee to uses violated his trust by detaining the land. To remedy this, an ecclesiastical chancellor devised the writ of subpœna, compelling him to answer upon oath as to his trust. It

longer endure; that their oath not to delay justice was not meant to prejudice the king's prerogative; concluding that cut of his absolute power and authority royal he commanded them to forbear meddling any farther in the cause till they should hear his pleasure from his own mouth. Upon his return to London the twelve judges appeared as culprits in the council-chamber. The king set forth their misdemeanours, both in substance and in the tone of their letter. He observed that the judges ought to check those advocates who presume to argue against his prerogative; that the popular lawyers had been the men, ever since his accession, who had trodden in all parliaments upon it, though the law could never be respected if the king were not revered; that he had a double prerogative—whereof the one was ordinary, and had relation to his private interest, which might be and was every day disputed in Westminster Hall; the other was of a higher nature, referring to his supreme and imperial power and sovereignty, which ought not to be disputed or handled in vulgar argument; but that of late the courts of common law are grown so vast and transcendent, as they did both meddle with the king's prerogative, and had encroached upon all other courts of justice. He commented on the form of the letter, as highly indecent; certifying him merely what they had done, instead of submitting to his princely judgment what they should do.

After this harangue the judges fell upon their knees, and acknowledged their error as to the form of the letter. But Coke entered on a defence of the substance, maintaining the delay required to be against the law and their oaths. The king required the chancellor and attorney-general to deliver their opinions; which, as may be supposed, were diametrically opposite to those of the chief-justice. These being heard, the following question was put to the judges: Whether, if at any time, in a case depending before the judges, his majesty conceived it to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the mean time, they ought not to stay accordingly? They all, except the chief-justice, declared that they would do so, and acknowledged it to be their duty; Hobart, chief-justice of the common pleas, adding that he would ever trust the justice of his majesty's commandment. But Coke only answered that, when the case should arise, he would do what should be fit for a judge to do. The king dismissed them all with a command to keep the limits of their several courts, and not to suffer his prerogative to be wounded; for he well knew the true and ancient common law to be the most favourable to kings of any law in the world, to which law he advised them to apply their studies.

The behaviour of the judges in this inglorious contention was

such as to deprive them of every shadow of that confidence which ought to be reposed in their integrity. Hobart, Doddridge, and several more, were men of much consideration for learning; and their authority in ordinary matters of law is still held high. But, having been induced by a sense of duty, or through the ascendancy that Coke had acquired over them, to make a show of withstanding the court, they behaved like cowardly rebels who surrender at the first discharge of cannon; and prostituted their integrity and their fame, through dread of losing their offices, or rather, perhaps, of incurring the unmerciful and ruinous penalties of the star-chamber.

The government had nothing to fear from such recreants; but Coke was suspended from his office, and not long afterwards dismissed. Having, however, fortunately in this respect, married his daughter to a brother of the duke of Buckingham, he was restored in about three years to the privy council, where his great experience in business rendered him useful; and had the satisfaction of voting for an enormous fine on his enemy the earl of Suffolk, late high-treasurer, convicted in the star-chamber of embezzlement. In the parliament of 1621, and still more conspicuously in that of 1628, he became, not without some honourable inconsistency of doctrine as well as practice, the strenuous assertor of liberty on the principles of those ancient laws which no one was admitted to know so well as himself; redeeming, in an intrepid and patriotic old age, the faults which we cannot avoid perceiving in his earlier life.

§ 21. The unconstitutional and usurped authority of the star-chamber over-rode every personal right, though an assembled parliament might assert its general privileges. Several remarkable instances in history illustrate its tyranny and contempt of all known laws and liberties. Two puritans, having been committed by the high commission court for refusing the oath *ex-officio*, employed Mr. Fuller, a bencher of Gray's Inn, to move for their habeas corpus; which he did on the ground that the high commissioners were not empowered to commit any of his majesty's subjects to prison. This being reckoned a heinous offence, he was himself committed, at Bancroft's instigation (whether by the king's personal warrant, or that of the council-board, does not appear), and lay in gaol to the day of his death; the archbishop constantly opposing his discharge, for which he petitioned. Whitelock, a barrister and afterwards a judge, was brought before the star-chamber on the charge of having given a private opinion to his client, that a certain commission issued by the crown was illegal. This was said to be a high contempt and slander of the king's prerogative. But, after a speech from Bacon in aggravation of this offence, the delinquent was discharged on a humble submission. Such, too, was the fate of a more distinguished person on a still more preposterous accusation. Selden, in his

History of Tithes, had indirectly weakened the claim of divine right, which the high-church faction pretended, and had attacked the argument from prescription, deriving their legal institution from the age of Charlemagne, or even a later era. Not content with letting loose on him some stanch polemical writers, the bishops prevailed on James to summon the author before the council. This proceeding is as much the disgrace of England as that against Galileo nearly at the same time is of Italy. Selden, like the great Florentine astronomer, bent to the rod of power, and made rather too submissive an apology for entering on this purely historical discussion.

§ 22. Every generous mind must reckon the treatment of Arabella Stuart among the hard measures of despotism, even if it were not also grossly in violation of English law. Exposed by her high descent and ambiguous pretensions to become the victim of ambitious designs wherein she did not participate, *that lady may be added to the sad list of royal sufferers who have envied the lot of humble birth.* There is not, as I believe, the least particle of evidence that she was engaged in the intrigues of the catholic party to place her on the throne. It was, however, thought a necessary precaution to put her in confinement a short time before the queen's death. At the trial of Raleigh she was present; and Cecil openly acquitted her of any share in the conspiracy. She enjoyed afterwards a pension from the king, and might have died in peace and obscurity, had she not conceived an unhappy attachment for Mr. Seymour, grandson of that earl of Hertford, himself so memorable an example of the perils of ambitious love. They were privately married; but on the fact transpiring, the council, who saw with jealous eyes the possible union of two dormant pretensions to the crown, committed them to the Tower. They both made their escape, but Arabella was arrested and brought back. Long and hopeless calamity broke down her mind; imploring in vain the just privileges of an Englishwoman, and nearly in want of necessities, she died in prison, and in a state of lunacy, some years afterwards. And this through the oppression of a kinsman whose advocates are always vaunting his good nature! Her husband became the famous marquis of Hertford, the faithful counsellor of Charles I., and partaker of his adversity.

§ 23. Several events, so well known that it is hardly necessary to dwell on them, aggravated the king's unpopularity during this parliamentary interval. The murder of Overbury burst into light, and revealed to an indignant nation the king's unworthy favourite, the earl of Somerset, and the hoary pander of that favourite's vices, the earl of Northampton, accomplices in that deep-laid and deliberate atrocity. Nor was it only that men so flagitious should have swayed

the councils of this country, and rioted in the king's favour. Strange things were whispered, as if the death of Overbury was connected with something that did not yet transpire, and which every effort was employed to conceal. The people, who had already attributed prince Henry's death to poison, now laid it at the door of Somerset; but for that conjecture, however highly countenanced at the time, there could be no foundation. The symptoms of the prince's illness, and the appearances on dissection, are not such as could result from any poison, and manifestly indicate a malignant fever, aggravated perhaps by injudicious treatment. Yet it is certain that a mystery hangs over this scandalous tale of Overbury's murder. The insolence and menaces of Somerset in the Tower, the shrinking apprehensions of him which the king could not conceal, the pains taken by Bacon to prevent his becoming desperate, and, as I suspect, to mislead the hearers by throwing them on a wrong scent, are very remarkable circumstances to which, after a good deal of attention, I can discover no probable clue. But it is evident that he was master of some secret which it would have highly prejudiced the king's honour to divulge.

§ 24. Sir Walter Raleigh's execution was another stain upon the reputation of James I. It is needless to mention that he fell under a sentence passed fifteen years before, on a charge of high treason, in plotting to raise Arabella Stuart to the throne. It is very probable that this charge was, partly at least, founded in truth; but his conviction was obtained on the single deposition of lord Cobham, an accomplice, a prisoner, not examined in court, and known to have already retracted his accusation. Such a verdict was thought contrary to law, even in that age of ready convictions. It was a severe measure to detain for twelve years in prison so splendid an ornament of his country, and to confiscate his whole estate. For Raleigh's conduct in the expedition to Guiana there is not much excuse to make. Rashness and want of foresight were always among his failings; also he would not have undertaken a service of so much hazard without obtaining a regular pardon for his former offence. But it might surely be urged that either his commission was absolutely null, or that it operated as a pardon; since a man attainted of treason is incapable of exercising that authority which is conferred upon him. Be this as it may, no technical reasoning could overcome the moral sense that revolted at carrying the original sentence unto execution. Raleigh might be amenable to punishment for the deception by which he had obtained a commission that ought never to have issued; but the nation could not help seeing in his death the sacrifice of the bravest and most renowned of Englishmen to the vengeance of Spain.

This unfortunate predilection for the court of Madrid had always

exposed James to his subjects' jealousy. They connected it with an inclination at least to tolerate popery, and with a dereliction of their commercial interests. But from the time that he fixed his hopes on the union of his son with the infanta, the popular dislike to Spain increased in proportion to his blind preference. If the king had not systematically disregarded the public wishes, he could never have set his heart on this impolitic match; contrary to the wiser maxim he had laid down in his own Basilicon Doron, never to seek a wife for his son except in a protestant family. But his absurd pride made him despise the uncrowned princes of Germany. This Spanish policy grew much more odious after the memorable events of 1619, the election of the king's son-in-law to the throne of Bohemia, his rapid downfall, and the conquest of the Upper Palatinate by Austria. If James had listened to some sanguine advisers, he would in the first instance have supported the pretensions of Frederic. But neither his own views of public law nor true policy dictated such an interference. The case was changed after the loss of his hereditary dominions, and the king was sincerely desirous to restore him to the Palatinate; but he unreasonably expected that he could effect this through the friendly mediation of Spain, while the nation, not perhaps less unreasonably, were clamorous for his attempting it by force of arms. In this agitation of the public mind he summoned the parliament that met in February, 1621.

§ 25. The king's speech on opening the session was, like all he had made on former occasions, full of hopes and promises, taking cheerfully his share of the blame as to past disagreements, and treating them as little likely to recur though all their causes were still in operation. He displayed, however, more judgment than usual in the commencement of this parliament. Among the methods devised to compensate the want of subsidies, none had been more injurious to the subject than patents of monopoly, including licences for exclusively carrying on certain trades. Though the government was principally responsible for the exactions they connived at, and from which they reaped a large benefit, the popular odium fell of course on the monopolists. Of these the most obnoxious was sir Giles Mompesson, who, having obtained a patent for gold and silver thread, sold it of baser metal. This fraud seems neither very extraordinary nor very important; but he had another patent for licensing inns and alehouses, wherein he is said to have used extreme violence and oppression. The house of commons proceed to investigate Mompesson's delinquency. Conscious that the crown had withdrawn its protection, he fled beyond sea. One Michell, a justice of peace, who had been the instrument of his tyranny, fell into the hands of the commons, who

voted him incapable of being in the commission of the peace and sent him to the Tower. Entertaining however, upon second thoughts, as we must presume, some doubts about their competence to inflict this punishment, especially the former part of it, they took the more prudent course, with respect to Mompesson, of appointing Noy and Hakewill to search for precedents in order to show how far and for what offences their power extended to punish delinquents against the state as well as those who offended against that house. The result appears some days after, in a vote that "they must join with the lords for punishing sir Giles Mompesson; it being no offence against our particular house, nor any member of it, but a general grievance."

The earliest instance of parliamentary impeachment, or of a solemn accusation of any individual by the commons at the bar of the lords, was that of lord Latimer in the year 1376. The latest hitherto was that of the duke of Suffolk in 1449. It had fallen into disuse, partly from the loss of that control which the commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject. The revival of this ancient mode of proceeding in the case of Mompesson, though a remarkable event in our constitutional annals, does not appear to have been noticed as an anomaly. It was not indeed conducted according to all the forms of an impeachment. The commons, requesting a conference with the other house, informed them generally of that person's offence, but did not exhibit any distinct articles at their bar. The lords took up themselves the inquiry; and, having become satisfied of his guilt, sent a message to the commons that they were ready to pronounce sentence. The speaker accordingly, attended by all the house, demanded judgment at the bar: when the lords passed as heavy a sentence as could be awarded for any misdemeanour; to which the king, by a stretch of prerogative which no one was then inclined to call in question, was pleased to add perpetual banishment.

The wrath of the commons was justly roused against that shameless corruption which characterizes the reign of James beyond every other in our history. It is too well known how deeply the greatest man of that age was tarnished by the prevailing iniquity. Complaints poured in against the chancellor Bacon for receiving bribes from suitors in his court. Some have vainly endeavoured to discover an excuse which he did not pretend to set up, and even ascribed the prosecution to the malevolence of sir Edward Coke. But Coke took no prominent share in this business; and though some of the charges against Bacon may not appear very heinous,

especially for those times, I know not whether the unanimous conviction of such a man, and the conscious pusillanimity of his defence, do not afford a more-irresistible presumption of his misconduct than anything specially alleged. He was abandoned by the court, and had previously lost, as I rather suspect, Buckingham's favour; but the king, who had a sense of his transcendent genius, remitted the fine of 40,000*l.* imposed by the lords, which he was wholly unable to pay.

§ 26. There was much to commend in the severity practised by the house towards public delinquents; such examples being far more likely to prevent the malversation of men in power than any law they could enact. But in the midst of these laudable proceedings they were hurried by the passions of the moment into an act of most unwarrantable violence. It came to the knowledge of the house that one Floyd, a gentleman confined in the Fleet prison, had used some slighting words about the elector palatine and his wife. It appeared, in aggravation, that he was a Roman catholic. Nothing could exceed the fury into which the commons were thrown by this very insignificant story. A flippant expression, below the cognizance of an ordinary court, grew at once into a portentous offence, which they ransacked their invention to chastise. After sundry novel and monstrous propositions, they fixed upon the most degrading punishment they could devise. Next day, however, the chancellor of the exchequer delivered a message, that the king, thanking them for their zeal, but desiring that it should not transport them to inconveniences, would have them consider whether they could sentence one who did not belong to them, nor had offended against the house or any member of it; and whether they could sentence a denying party, without the oath of witnesses; referring them to an entry on the rolls of parliament in the first year of Henry IV., that the judicial power of parliament does not belong to the commons. He would have them consider whether it would not be better to leave Floyd to him, who would punish him according to his fault.

This message put them into some embarrassment. They had come to a vote in Mompesson's case, in the very words employed in the king's message, confessing themselves to have no jurisdiction, except over offenders against themselves. The warm speakers now controverted this proposition with such arguments as they could muster; Coke, though from the reported debates he seems not to have gone the whole length, contending that the house was a court of record, and that it consequently had power to administer an oath. They returned a message by the speaker, excepting to the record in 1 H. IV., because it was not an act of parliament to bind them, and persisting, though with humility, in their first votes. The king replied mildly; urging them to show precedents, which they were

manifestly incapable of doing. The lords requested a conference, which they managed with more temper, and, notwithstanding the solicitude displayed by the commons to maintain their pretended right, succeeded in withdrawing the matter to their own jurisdiction. This conflict of privileges was by no means of service to the unfortunate culprit; the lords perceived that they could not mitigate the sentence of the lower house without reviving their dispute, and vindicated themselves from all suspicion of indifference towards the cause of the Palatinate by augmented severity. Floyd was adjudged to be degraded from his gentility, and to be held an infamous person; his testimony not to be received; to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse's tail, and the tail in his hand, and there to stand two hours in the pillory, and to be branded in the forehead with the letter K; to ride four days afterwards in the same manner to Westminster, and there to stand two hours more in the pillory, with words in a paper in his hat showing his offence; to be whipped at the cart's tail from the Fleet to Westminster Hall; to pay a fine of 5000*l.*, and to be a prisoner in Newgate during his life. The whipping was a few days after remitted on prince Charles's motion; but he seems to have undergone the rest of the sentence. There is surely no instance in the annals of our own, and hardly of any civilized country, where a trifling offence, if it were one, has been visited with such outrageous cruelty. The cold-blooded deliberate policy of the lords is still more disgusting than the wild fury of the lower house.

Everything had hitherto proceeded with harmony between the king and parliament. His ready concurrence in their animadversion on Mompesson and Michell, delinquents who had acted at least with the connivance of government, and in the abolition of monopolies, seemed to remove all discontent. The commons granted two subsidies early in the session without alloying their bounty with a single complaint of grievances. One might suppose that the subject of impositions had been entirely forgotten, not an allusion to them occurring in any debate. They were going on with some bills for reformation of abuses, to which the king was willing to accede, when they received an intimation that he expected them to adjourn over the summer. It produced a good deal of dissatisfaction to see their labour so hastily interrupted; especially as they ascribed it to a want of sufficient sympathy on the court's part with their enthusiastic zeal for the elector palatine. They were adjourned by the king's commission, after an unanimous declaration of their resolution to spend their lives and fortunes for the defence of their own religion and of the Palatinate. This solemn protestation and pledge was entered on record in the journals.

§ 27. They met again after five months, without any change in

their views of policy. At a conference of the two houses, lord Digby, by the king's command, explained all that had occurred in his embassy to Germany for the restitution of the Palatinate; which, though absolutely ineffective, was as much as James could reasonably expect without a war. He had in fact, though, according to the laxity of those times, without declaring war on any one, sent a body of troops under sir Horace Vere, who still defended the Lower Palatinate. It was necessary to vote more money, lest these should mutiny for want of pay. And it was stated to the commons in this conference, that to maintain a sufficient army in that country for one year would require 900,000*l.*; which was left to their consideration. But now it was seen that men's promises to spend their fortunes in a cause not essentially their own are written in the sand. The commons had no reason perhaps to suspect that the charge of keeping 30,000 men in the heart of Germany would fall much short of the estimate. Yet after long baggling they voted only one subsidy, amounting to 70,000*l.*; a sum manifestly insufficient for the first equipment of such a force. This parsimony could hardly be excused by their suspicion of the king's unwillingness to undertake the war, for which it afforded the best justification.

§ 23. James was probably not much displeased at finding so good a pretext for evading a compliance with their martial humour; nor had there been much appearance of dissatisfaction on either side till the commons drew up a petition and remonstrance against the growth of popery; suggesting, among other remedies for this grievance, that the prince should marry one of our own religion, and that the king would direct his efforts against that power (meaning Spain) which first maintained the war in the Palatinate. This petition was proposed by sir Edward Coke. The courtiers opposed it as without precedent; the chancellor of the duchy observing that it was of so high and transcendent a nature, he had never known the like within those walls. Even the mover defended it rather weakly, according to our notions, as intended only to remind the king, but requiring no answer. The petition had not been presented, when the king, having obtained a copy of it, sent a peremptory letter to the speaker, that he thought himself very free and able to punish any man's misdemeanours in parliament, as well during their sitting as after, which he meant not to spare upon occasion of any man's insolent behaviour in that place. He assured them that he would not deign to hear their petition if it touched on any of those points which he had forbidden.

The house received this message with unanimous firmness, but without any undue warmth. A committee was appointed to draw up a petition, which, in the most decorous language and with strong

professions of regret at his majesty's displeasure, contained a defence of their former proceedings, and hinted very gently that they could not conceive his honour and safety, or the state of the kingdom, to be matters at any time unfit for their deepest consideration in time of parliament. They adverted more pointedly to that part of the king's message which threatened them for liberty of speech, calling it their ancient and undoubted right, and an inheritance received from their ancestors, which they again prayed him to confirm. His answer, though considerably milder than what he had designed, gave indications of a resentment not yet subdued. He dwelt at length on their unfitness for entering on matters of government, and commented with some asperity even on their present apologetical petition. In the conclusion he observed that, "although he could not allow of the style calling their privileges an undoubted right and inheritance, but could rather have wished that they had said that their privileges were derived from the grace and permission of his ancestors and himself (for most of them had grown from precedent, which rather shows a toleration than inheritance), yet he gave them his royal assurance that, as long as they contained themselves within the limits of their duty, he would be as careful to maintain their lawful liberties and privileges as he would his own prerogative, so that their house did not touch on that prerogative, which would enforce him or any just king to retrench their privileges."

This explicit assertion that the privileges of the commons existed only by sufferance, and conditionally upon good behaviour, exasperated the house far more than the denial of their right to enter on matters of state. In the one they were conscious of having somewhat transgressed the boundaries of ordinary precedents; in the other their individual security, and their very existence as a deliberative assembly, were at stake. After a long and warm debate they entered on record in the Journals their famous protestation of December 18th, 1621, in the following words:—

"The commons now assembled in parliament, being justly occasioned thereunto, concerning sundry liberties, franchises, privileges, and jurisdictions of parliament, amongst others not herein mentioned, do make this protestation following:—That the liberties, franchises, privileges, and jurisdictions of parliament are the ancient and undoubted birth-right and inheritance of the subjects of England; and that the arduous and urgent affairs concerning the king, state, and the defence of the realm, and of the church of England, and the making and maintenance of laws, and redress of mischiefs and grievances which daily happen within this realm, are proper subjects and matter of counsel and debate in parliament; and that in the handling and proceeding of those businesses every member of the house hath, and of right ought to have, freedom of speech to propound, treat, reason, and bring to conclusion the same; that the commons in parliament have like liberty and freedom to treat of those matters in such order as in their judgments

shall seem fittest : and that every such member of the said house hath like freedom from all impeachment, imprisonment, and molestation (other than by the censure of the house itself), for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the parliament or parliament business ; and that, if any of the said members be complained of and questioned for anything said or done in parliament, the same is to be showed to the king by the advice and assent of all the commons assembled in parliament, before the king give credence to any private information."

This protestation was not likely to pacify the king's anger. He therefore adjourned, and, in about a fortnight after, dissolved them. But in the interval, having sent for the journal-book, he erased their last protestation with his own hand, and published a declaration of the causes which had provoked him to this unusual measure, alleging the unfitness of such a protest, after his ample assurance of maintaining their privileges, the irregular manner in which, according to him, it was voted, and its ambiguous and general wording, which might serve in future times to invade most of the prerogatives annexed to the imperial crown. In his proclamation for dissolving the parliament James recapitulated all his grounds of offences ; but finally required his subjects to take notice that it was his intention to govern them as his progenitors and predecessors had done, and to call a parliament again on the first convenient occasion. He immediately followed up this dissolution of Parliament by dealing out his vengeance on its most conspicuous leaders : sir Edward Coke and sir Robert Philips were committed to the Tower ; Mr. Pym and one or two more to other prisons ; sir Dudley Digges, and several who were somewhat less obnoxious than the former, were sent on a commission to Ireland, as a sort of honourable banishment. The earls of Oxford and Southampton underwent an examination before the council, and the former was committed to the Tower on pretence of having spoken words against the king. It is worthy of observation that, in this session, a portion of the upper house had united in opposing the court. Nothing of this kind is noticed in former parliaments, except perhaps a little on the establishment of the Reformation. In this minority were considerable names : Essex, Southampton, Warwick, Oxford, Say, Spencer. Whether a sense of public wrongs or their particular resentments influenced these noblemen, their opposition must be reckoned an evident sign of the change that was at work in the spirit of the nation, and by which no rank could be wholly unaffected.

§ 29. James, with all his reputed pusillanimity, never showed any signs of fearing popular opinion. His obstinate adherence to the marriage treaty with Spain was the height of political rashness in so critical a state of the public mind. But what with elevated notions of his prerogative and of his skill in government on the one

hand, what with a confidence in the submissive loyalty of the English on the other, he seems constantly to have fancied that all opposition proceeded from a small troublesome faction, whom if he could any way silence, the rest of his people would at once repose in a dutiful reliance on his wisdom. Hence he met every succeeding parliament with as sanguine hopes as if he had suffered no disappointment in the last. The nation was however wrought up at this time to an alarming pitch of discontent. Libels were in circulation about 1621, so bitterly malignant in their censures of his person and administration, that two hundred years might seem, as we read them, to have been mistaken in their date. Heedless, however, of this growing odium, James continued to solicit the affected coyness of the court of Madrid. The circumstances of that negotiation belong to general history. It is only necessary to remind the reader that the king was induced, during the residence of prince Charles and the duke of Buckingham in Spain, to swear to certain private articles, some of which he had already promised before their departure, by which he bound himself to suspend all penal laws affecting the catholics, to permit the exercise of their religion in private houses, and to procure from parliament if possible a legal toleration. This toleration, as preliminary to the entire re-establishment of popery, had been the first great object of Spain in the treaty. But that court, having protracted the treaty for years, in order to extort more favourable terms, and interposed a thousand pretences, became the dupe of its own artifices; the resentment of a haughty minion overthrowing with ease the painful fabric of this tedious negotiation.

§ 30. Buckingham obtained a transient and unmerited popularity by thus averting a great public mischief, which rendered the next parliament unexpectedly peaceable. The commons voted three subsidies and three fifteenths, in value about 300,000*l.*; but with a condition, proposed by the king himself, that, in order to ensure its application to naval and military armaments, it should be paid into the hands of treasurers appointed by themselves, who should issue money only on the warrant of the council of war. He seemed anxious to tread back the steps made in the former session, not only referring the highest matters of state to their consideration, but promising not to treat for peace without their advice. They, on the other hand, acknowledged themselves most bound to his majesty for having been pleased to require their humble advice in a case so important, not meaning, we may be sure, by these courteous and loyal expressions, to recede from what they had claimed in the last parliament as their undoubted right.

§ 31. The most remarkable affair in this session was the impeachment of the earl of Middlesex, actually lord treasurer of England,

for bribery and other misdemeanors. It is well known that the prince of Wales and duke of Buckingham instituted this prosecution, to gratify the latter's private pique, against the wishes of the king, who warned them they would live to have their fill of parliamentary impeachment. It was conducted by managers on the part of the commons in a very regular form, except that the depositions of witnesses were merely read by the clerk; that fundamental rule of English law which insists on the *vivâ voce* examination being as yet unknown, or dispensed with in political trials. Nothing is more worthy of notice in the proceedings upon this impeachment than what dropped from sir Edwin Sandys, in speaking upon one of the charges. Middlesex had laid an imposition of 3*l.* per ton on French wines, for taking off which he received a gratuity. Sandys commenting on this offence, protested, in the name of the commons, that they intended not to question the power of imposing claimed by the king's prerogative: this they touched not upon now; they continued only their claim, and when they should have occasion to dispute it would do so with all due regard to his majesty's state and revenue. Such cautious and temperate language, far from indicating any disposition to recede from their pretensions, is rather a proof of such united steadiness and discretion as must ensure their success. Middlesex was unanimously convicted by the peers. His impeachment was of the highest moment to the commons, as it restored for ever that salutary constitutional right which the single precedent of lord Bacon might have been insufficient to establish against the ministers of the crown.

§ 32. The two last parliaments had been dissolved without passing a single act, except the subsidy bill of 1621. An interval of legislation for thirteen years was too long for any civilised country. Several statutes were enacted in the present session, but none so material as that for abolishing monopolies for the sale of merchandise, or for using any trade. This is of a declaratory nature, and recites that they are already contrary to the ancient and fundamental laws of the realm. Scarce any difference arose between the crown and the commons. This singular calm might probably have been interrupted, had not the king put an end to the session. They expressed some little dissatisfaction at this step, and presented a list of grievances, one only of which is sufficiently considerable to deserve notice; namely, the proclamations already mentioned in restraint of building about London, whereof they complain in very gentle terms, considering their obvious illegality and violation of private right.

The commons had now been engaged for more than twenty years in a struggle to restore and to fortify their own and their fellow subjects' liberties. They had obtained in this period but one legislative measure of importance, the late declaratory act against mono-

policies. But they had rescued from disuse their ancient right of impeachment. They had placed on record a protestation of their claim to debate all matters of public concern. They had remonstrated against the usurped prerogatives of binding the subject by proclamation, and of levying customs at the out-port. They had secured beyond controversy their exclusive privilege of determining contested elections of their members. Of these advantages some were evidently incomplete, and it would require the most vigorous exertions of future parliaments to realize them. But such exertions the increased energy of the nation gave abundant cause to anticipate. A deep and lasting love of freedom had taken hold of every class except perhaps the clergy, from which, when viewed together with the rash pride of the court and the uncertainty of constitutional principles and precedents, collected through our long and various history, a calm bystander might presage that the ensuing reign would not pass without disturbance, nor perhaps end without confusion.

CHAPTER VII.

ON THE ENGLISH CONSTITUTION FROM THE ACCESSION OF CHARLES I. TO THE DISSOLUTION OF HIS THIRD PARLIAMENT.

§ 1. Parliament of 1625. Its Dissolution. § 2. Another Parliament called. Prosecution of Buckingham. § 3. Arbitrary Proceedings towards the Earls of Arundel and Bristol. § 4. Loan demanded by the King. Several committed for refusal to contribute. They sue for a Habeas Corpus. § 5. Arguments on this Question, which is decided against them. § 6. A Parliament called in 1628. Petition of Right. § 7. Tonnage and Poundage disputed. King dissolves Parliament. § 8. Religious Differences. Prosecution of Puritans by Bancroft. § 9. Growth of High Church Tenets. § 10. Differences as to the Observance of Sunday. § 11. Arminian Controversy. § 12. State of Catholics under James. Jealousy of the Court's Favour towards them. § 13. Unconstitutional Tenets promulgated by the High Church Party. § 14. General Remarks.

§ 1. CHARLES I. had much in his character very suitable to the times in which he lived, and to the spirit of the people he was to rule; a stern and serious deportment, a disinclination to all licentiousness, and a sense of religion that seemed more real than in his father. These qualities we might suppose to have raised some expectation of him, and to have procured at his accession some of that popularity which is rarely withheld from untried princes. Yet it does not appear that he enjoyed even this first transient sunshine of his subjects' affection. Solely intent on retrenching the excesses of prerogative, and well aware that no sovereign would voluntarily recede from the possession of power, they seem to have dreaded to admit into their bosoms any sentiments of personal loyalty which might enervate their resolution. And Charles took speedy means to convince them that they had not erred in withholding their confidence.

Elizabeth in her systematic parsimony, James in his averseness to war, had been alike influenced by a consciousness that want of money alone could render a parliament formidable to their power. None of the irregular modes of supply were ever productive enough to compensate for the clamour they occasioned; after impositions and benevolences were exhausted, it had always been found necessary, in the most arbitrary times of the Tudors, to fall back on the representatives of the people. But Charles succeeded to a war, at least to the preparation of a war, rashly undertaken through his own weak compliance, the arrogance of his favourite, and the

generous or fanatical zeal of the last parliament. He would have perceived it to be manifestly impossible, if he had been capable of understanding his own position, to continue this war without the constant assistance of the house of commons, or to obtain that assistance without very costly sacrifices of his royal power. It was not the least of this monarch's imprudences, or rather of his blind compliances with Buckingham, to have not only commenced hostilities against Spain which he might easily have avoided,¹ and persisted in them for four years, but entered on a fresh war with France, though he had abundant experience to demonstrate the impossibility of defraying its charges.

The first parliament of this reign has been severely censured on account of the penurious supply it doled out for the exigencies of a war in which its predecessors had involved the king. I will not say that this reproach is wholly unfounded. A more liberal proceeding, if it did not obtain a reciprocal concession from the king, would have put him more in the wrong. But, according to the common practice and character of all such assemblies, it was preposterous to expect subsidies equal to the occasion until a foundation of confidence should be laid between the crown and parliament. The commons had begun probably to repent of their hastiness in the preceding year, and to discover that Buckingham and his pupil, or master (which shall we say?), had conspired to deceive them. They were not to forget that none of the chief grievances of the last reign were yet redressed, and that supplies must be voted slowly and conditionally if they would hope for reformation. Hence they made their grant of tonnage and poundage to last but for a year instead of the king's life, as had for two centuries been the practice; on which account the upper house rejected the bill. Nor would they have refused a further supply, beyond the two subsidies (about 140,000*l.*) which they had granted, had some tender of redress been made by the crown; and were actually in debate upon the matter when interrupted by a sudden dissolution.

§ 2. Nothing could be more evident, by the experience of the late reign as well as by observing the state of public spirit, than that hasty and premature dissolutions or prorogations of parliament served but to aggravate the crown's embarrassments. Every successive house of commons inherited the feelings of its predecessor, without which it would have ill represented the prevalent humour of the nation. The same men, for the most part, came again to parliament more irritated and desperate of reconciliation with the sovereign than before. Even the politic measure, as it was fancied

¹ War had not been declared at Charles's accession, nor at the dissolution of the first parliament. In fact, he was much

more set upon it than his subjects. Hume and all his school kept this out of sight.

, of excluding some of the most active members from seats in new assembly, by nominating them sheriffs for the year, failed either of the expected success; as it naturally must in an age all ranks partook in a common enthusiasm. Hence the prosecution against Buckingham, to avert which Charles had dissolved the first parliament, was commenced with redoubled vigour in the second. It was too late, after the precedents of Bacon and Middleton dispute the right of the commons to impeach a minister of state.

The king, however, anticipating their resolutions, after some speeches only had been uttered against his favourite, sent a message that he would not allow any of his servants to be questioned concerning them, much less such as were of eminent place and near to him. He saw, he said, that some of them aimed at the duke of Buckingham, whom, in the last parliament of his father, all had honoured to honour and respect, nor did he know what had happened to alter their affections; but he assured them that the duke did nothing without his own special direction and appointment. The haughty message so provoked the commons, that, having no positive testimony against Buckingham, they came to a vote that no man's honour or fame is a good ground of proceeding either by inquiry or petitioning the complaint to the king or lords; nor did a speech by the lord-keeper, severely rating their presumption, tend to diminish or to intimidate the assembly. The duke was accordingly impeached at the bar of the house of peers on eight articles, many of which were probably well founded; yet, as the commons heard no evidence in support of them, it was rather unreasonable in them to insist that he might be committed to the Tower.

In the conduct of this impeachment, two of the managers, sir Eliot and sir Dudley Digges, one the most illustrious counsellor in the cause of liberty whom that time produced, the other a man of much ability and a useful supporter of the popular party, were not free from some oblique views towards promotion, gave offence by words spoken, or alleged to be spoken, in derogation of majesty's honour, that they were committed to the Tower. The commons of course resented this new outrage. They resolved to do no more business till they were righted in their privileges. They denied the words imputed to Digges; and, thirty-six peers agreeing that he had not spoken them, the king admitted that he was mistaken, and released both their members. He had already interfered in upon the privileges of the house of lords by committing the duke of Arundel to the Tower during the session; not upon any criminal charge, but, as was commonly surmised, on account of a marriage which his son had made with a lady of royal blood. In private offences were sufficient in those arbitrary reigns to expose the subject to indefinite imprisonment, if not to an actual

sentence in the star-chamber. The lords took up this detention of one of their body, and, after formal examination of precedents by a committee, came to a resolution, "that no lord of parliament, the parliament sitting, or within the usual times of privilege of parliament, is to be imprisoned or restrained without sentence or order of the house, unless it be for treason or felony, or for refusing to give surety for the peace." This assertion of privilege was manifestly warranted by the co-extensive liberties of the commons. After various messages between the king and lords, Arundel was ultimately set at liberty.

This infringement of the rights of the peerage was accompanied by another not less injurious, the refusal of a writ of summons to the earl of Bristol. The lords were justly tenacious of this unquestionable privilege of their order, without which its constitutional dignity and independence could never be maintained. The house necessarily insisted upon Bristol's receiving his summons, which was sent him with an injunction not to comply with it by taking his place. But the spirited earl knew that the king's constitutional will expressed in the writ ought to outweigh his private command, and laid the secretary's letter before the house of lords. The king prevented any further interference in his behalf by causing articles of charge to be exhibited against him by the attorney-general, whereon he was committed to the Tower. These assaults on the pride and consequence of an aristocratic assembly, from whom alone the king could expect effectual support, display his unfitness not only for the government of England, but of any other nation. Nor was his conduct towards Bristol less oppressive than impolitic. If we look at the harsh and indecent employment of his own authority, and even testimony, to influence a criminal process against a man of approved and untainted worth, and his sanction of charges which, if Bristol's defence be as true as it is now generally admitted to be, he must have known to be unfounded, we shall hardly concur with those candid persons who believe that Charles would have been an excellent prince in a more absolute monarchy. Nothing, in truth, can be more preposterous than to maintain, like Clarendon and Hume, the integrity and innocence of lord Bristol, together with the sincerity and humanity of Charles I.

§ 4. Though the lords petitioned against a dissolution, the king was determined to protect his favourite, and rescue himself from the importunities of so refractory a house of commons. Perhaps he had already taken the resolution of governing without the concurrence of parliaments, though he was induced to break it the ensuing year. For, the commons having delayed to pass a bill for the five subsidies which they had voted in this session till they should obtain some satisfaction for their complaints, he was left with a *parliament*

supply. This was not wholly unacceptable to some of his councillors, and probably to himself, as affording a pretext for those unauthorised demands which the advocates of arbitrary prerogative deemed more consonant to the monarch's honour. He had issued letters of privy seal, after the former parliament, to those in every county whose names had been returned by the lord lieutenant as most capable, mentioning the sum they were required to lend, with a promise of repayment in eighteen months. This specification of a particular sum was reckoned an unusual encroachment, and a manifest breach of the statute against arbitrary benevolences; especially as the names of those who refused compliance were to be returned to the council. But the government now ventured on a still more outrageous stretch of power. They first attempted to persuade the people that, as subsidies had been voted in the house of commons, they should not refuse to pay them, though no bill had been passed for that purpose. But a tumultuous cry was raised in Westminster-hall from those who had been convened, that they would pay no subsidy but by authority of parliament. This course, therefore, was abandoned for one hardly less unconstitutional. A general loan was demanded from every subject, according to the rate at which he was assessed in the last subsidy. The commissioners appointed for the collection of this loan received private instructions to require not less than a certain proportion of each man's property in lands or goods, to treat separately with every one, to examine on oath such as should refuse, to certify the names of refractory persons to the privy council, and to admit of no excuse for abatement of the sum required.

This arbitrary taxation (for the name of loan could not disguise the extreme improbability that the money would be repaid), so general and systematic as well as so weighty, could not be endured without establishing a precedent that must have shortly put an end to the existence of parliaments. But the kingdom was not in a temper to put up with tyranny. The king's advisers were as little disposed to recede from their attempt. They prepared to enforce it by the arm of power. The common people who refused to contribute were impressed to serve in the navy. The gentry were bound by recognizance to appear at the council-chamber, where many of them were committed to prison. Among these were five knights, Darnel, Corbet, Earl, Heveningham, and Hamjden, who sued the court of queen's bench for their writ of habeas corpus. The writ was granted; but the warden of the Fleet made return that they were detained by a warrant from the privy council, informing him of no particular cause of imprisonment, but that they were committed by the special command of his majesty. This gave rise to a most important question, whether such a return was

sufficient in law to justify the court in remitting the parties to custody. The fundamental immunity of English subjects from arbitrary detention had never before been so fully canvassed; and it is to the discussion which arose out of the case of these five gentlemen that we owe its continual assertion by parliament, and its ultimate establishment in full practical efficacy by the statute of Charles II. It was argued with great ability by Noy, Selden, and other eminent lawyers, on behalf of the claimants, and by the attorney-general Heath for the crown.

§ 5. The counsel for the prisoners grounded their demand of liberty on the original basis of Magna Charta, the twenty-ninth section of which, as is well known, provides that "no free man shall be taken or imprisoned unless by lawful judgment of his peers, or the law of the land." This principle having been frequently transgressed by the king's privy council in earlier times, statutes had been repeatedly enacted, independently of the general confirmations of the charter, to redress this material grievance. Thus in the 25th of Edward III. it is provided that "no one shall be taken by petition or suggestion to the king or his counsel, unless it be (*i.e.* but only) by indictment or presentment, or by writ original at the common law." And this is again enacted three years afterwards, with little variation, and once again in the course of the same reign. It was never understood, whatever the loose language of these old statutes might suggest, that no man could be kept in custody upon a criminal charge before indictment, which would have afforded too great security to offenders. But it was the regular practice that every warrant of commitment, and every return by a gaoler to the writ of habeas corpus, must express the nature of the charge, so that it might appear whether it were no legal offence, in which case the party must be instantly set at liberty; or one for which bail ought to be taken; or one for which he must be remanded to prison. It appears also to have been admitted without controversy, though not perhaps according to the strict letter of law, that the privy council might commit to prison on a criminal charge, since it seemed preposterous to deny that power to those entrusted with the care of the commonwealth which every petty magistrate enjoyed. But it was contended that they were as much bound as every petty magistrate to assign such a cause for their commitments as might enable the court of king's bench to determine whether it should release or remand the prisoner brought before them by habeas corpus.

The advocates for this principle alleged several precedents from the reign of Henry VII. to that of James, where persons committed by the council generally, or even by the special command of the king, had been admitted to bail on their habeas corpus. "But I conceive," said one of these, "that our case will not stand upon

precedent, but upon the fundamental laws and statutes of this realm; and though the precedents look one way or the other, they are to be brought back unto the laws by which the kingdom is governed." He was aware that a pretext might be found to elude most of his precedents. The warrant had commonly declared the party to be charged on *suspicion* of treason or of felony; in which case he would of course be bailed by the court. Yet in some of these instances the words "by the king's special command" were inserted in the commitment; so that they served to repel the pretension of an arbitrary right to supersede the law by his personal authority. Ample proof was brought from the old law-books that the king's command could not excuse an illegal act.

To these pleadings for liberty, Heath, the attorney-general, replied in a speech of considerable ability, full of those high principles of prerogative which, trampling as it were on all statute and precedent, seemed to tell the judges that they were placed there to obey rather than to determine.

The judges behaved during this great cause with apparent moderation and sense of its importance to the subject's freedom. Their decision, however, was in favour of the crown; and the prisoners were remanded to custody. In pronouncing this judgment the chief justice, sir Nicholas Hyde, avoiding the more extravagant tenets of absolute monarchy, took the narrower line of denying the application of those precedents which had been alleged to show the practice of the court in bailing persons committed by the king's special command. He endeavoured also to prove that, where no cause had been expressed in the warrant, except such command as in the present instance, the judges had always remanded the parties; but with so little success, that I cannot perceive more than one case mentioned by him, and that above a hundred years old, which supports this doctrine. Everything that distinguished our constitutional laws, all that rendered the name of England valuable, was at stake in this issue. If the judgment in the case of ship-money was more flagrantly iniquitous, it was not so extensively destructive as the present.

§ 6. Neither these measures, however, of illegal severity towards the uncompliant, backed as they were by a timid court of justice, nor the exhortations of a more prostitute and shameless band of churchmen, could divert the nation from its cardinal point of faith in its own prescriptive franchises. To call another parliament appeared the only practicable means of raising money for a war in which the king persisted with great impolicy, or rather blind trust in his favourite. He consented to this with extreme unwillingness (1628). Previously to its assembling he released a considerable number of gentlemen and others who had been committed for their refusal of

the loan. These were in many cases elected to the new parliament, coming thither with just indignation at their country's wrongs, and pardonable resentment of their own. No year, indeed, within the memory of any one living had witnessed such violations of public liberty as 1627. Charles seemed born to carry into daily practice those theories of absolute power which had been promulgated from his father's lips. Even now, while the writs were out for a new parliament, commissioners were appointed to raise money "by impositions or otherwise, as they should find most convenient in a case of such inevitable necessity, wherein form and circumstance must be dispensed with rather than the substance be lost and hazarded;" and the levying of ship-money was already debated in the council. Anticipating, as indeed was natural, that this house of commons would correspond as ill to the king's wishes as their predecessors, his advisers were preparing schemes more congenial, if they could be rendered effective, to the spirit in which he was to govern. A contract was entered into for transporting some troops and a considerable quantity of arms from Flanders into England, under circumstances at least highly suspicious, and which, combined with all the rest that appears of the court policy at that time, leaves no great doubt on the mind that they were designed to keep under the people while the business of contribution was going forward. Shall it be imputed as a reproach to the Cokes, the Seldens, the Glanvils, the Pyins, the Eliots, the Philippses of this famous parliament, that they endeavoured to devise more effectual restraints than the law had hitherto imposed on a prince who had snapped like bands of tow the ancient statutes of the land, to remove from his presence counsellors to have been misled by whom was his best apology, and to subject him to an entire dependence on his people for the expensiture of government, as the surest pledge of his obedience to the laws?

The principal matters of complaint taken up by the commons in this session were, the exaction of money under the name of loans; the commitment of those who refused compliance, and the late decision of the king's bench remanding them upon a habeas corpus; the billeting of soldiers on private persons, which had occurred in the last year, whether for convenience or for purposes of intimidation and annoyance; and the commissions to try military offenders by martial law—a procedure necessary within certain limits to the discipline of an army, but unwarranted by the constitution of this country, which was little used to any regular forces, and stretched by the arbitrary spirit of the king's administration beyond all bounds. These four grievances or abuses form the foundation of the PETITION OF RIGHT, presented by the commons in the shape of a declaratory statute. Charles had recourse to many subterfuges

in hopes to elude the passing of this law. Even when the bill was tendered to him for that assent which it had been necessary for the last two centuries that the king should grant or refuse in a word, he returned a long and equivocal answer, from which it could only be collected that he did not intend to remit any portion of what he had claimed as his prerogative. But on an address from both houses for a more explicit answer, he thought fit to consent to the bill in the usual form. The commons, of whose harshness towards Charles his advocates have said so much, immediately passed a bill for granting five subsidies, about 350,000*l.*—a sum not too great for the wealth of the kingdom or for his exigencies, but considerable according to the precedents of former times, to which men naturally look.

Though the king was compelled to accede in general terms to the petition, he had the insincerity to circulate one thousand five hundred copies of it through the country, after the prorogation, with his first answer annexed—an attempt to deceive without the possibility of success.

The Petition of Right, as this statute is still called, from its not being drawn in the common form of an act of parliament, after reciting the various laws which have established certain essential privileges of the subject, and enumerating the violations of them which had recently occurred, in the four points of illegal exactions, arbitrary commitments, quartering of soldiers or sailors, and infliction of punishment by martial law, prays the king, "That no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament; and that none be called to answer or take such oath, or to give attendance, or be confined or otherwise molested or disquieted concerning the same, or for refusal thereof; and that no freeman in any such manner as is before mentioned be imprisoned or detained; and that your majesty would be pleased to remove the said soldiers and marines, and that your people may not be so burthened in time to come; and that the aforesaid commissions for proceeding by martial law may be revoked and annulled; and that hereafter no commissions of the like nature may issue forth to any person or persons whatever, to be executed as aforesaid, lest by colour of them any of your majesty's subjects be destroyed or put to death contrary to the laws and franchises of the land."²

§ 7. It might not unreasonably be questioned whether the language of this statute were sufficiently general to comprehend duties charged on merchandise at the outports as well as internal taxes and exactions, especially as the former had received a sort of sanction, though justly deemed contrary to law, by the judgment of the

² The whole statute is printed at the end of the present chapter

court of exchequer in Bates's case. The commons however were steadily determined not to desist till they should have rescued their fellow-subjects from a burthen as unwarrantably imposed as those specifically enumerated in their Petition of Right. Tonnage and poundage, the customary grant of every reign, had been taken by the present king without consent of parliament; the lords having rejected, as before mentioned, a bill that limited it to a single year. The house now prepared a bill to grant it, but purposely delayed its passing, in order to remonstrate with the king against his unconstitutional anticipation of their consent. They conclude, after repeating their declaration that the receiving of tonnage and poundage and other impositions not granted by parliament is a breach of the fundamental liberties of this kingdom, and contrary to the late Petition of Right, with most humbly beseeching his majesty to forbear any further receiving of the same, and not to take it in ill part from those of his loving subjects who should refuse to make payment of any such charges without warrant of law.

The king anticipated the delivery of this remonstrance by proroguing parliament. Tonnage and poundage, he told them, was what he had never meant to give away, nor could possibly do without. By this abrupt prorogation while so great a matter was unsettled, he trod back his late footsteps, and dissipated what little hopes might have arisen from his tardy assent to the Petition of Right. During the interval before the ensuing session, those merchants, among whom Chambers, Rolls, and Vassal are particularly to be remembered with honour, who gallantly refused to comply with the demands of the custom-house, had their goods distrained, and, on suing writs of replevin, were told by the judges that the king's right, having been established in the case of Bates, could no longer be disputed. Thus the commons reassembled, by no means less inflamed against the king's administration than at the commencement of the preceding session. Their proceedings were conducted with more than usual warmth. Buckingham's death, which had occurred since the prorogation, did not allay their resentment against the advisers of the crown. But the king, who had very much lowered his tone in speaking of tonnage and poundage, and would have been content to receive it as their grant, perceiving that they were bent on a full statutory recognition of the illegality of impositions without their consent, and that they had opened a fresh battery on another side, by mingling in certain religious disputes in order to attack some of his favourite prelates, took the step, to which he was always inclined, of dissolving this third parliament.

§ 8. The religious disputes to which I have just alluded are chiefly to be considered, for the present purpose, in relation to those jealousies and resentments springing out of the ecclesiastical ad-

ministration, which during the reigns of the first two Stuarts furnished unceasing food to political discontent. James having early shown his inflexible determination to restrain the puritans, the bishops proceeded with still more rigour than under Elizabeth. No longer thwarted, as in her time, by an unwilling council, they succeeded in exacting a general conformity to the ordinances of the church. It had been solemnly decided by the judges in the queen's reign, and in 1604, that, although the statute establishing the high-commission court did not authorize it to deprive ministers of their benefices, yet, this law being only in affirmation of the queen's inherent supremacy, she might, by virtue of that, regulate all ecclesiastical matters at her pleasure, and erect courts with such powers as she should think fit. Upon this somewhat dangerous principle archbishop Bancroft deprived a considerable number of puritan clergymen; while many more, finding that the interference of the commons in their behalf was not regarded, and that all schemes of evasion were come to an end, were content to submit to the obnoxious discipline. But their affections being very little conciliated by this coercion, there remained a large party within the bosom of the established church prone to watch for and magnify the errors of their spiritual rulers. These men preserved the name of puritans. They naturally fell in with the patriotic party in the house of commons, and kept up throughout the kingdom a distrust of the crown, which has never been so general in England as when connected with some religious apprehensions.

§ 9. The system pursued by Bancroft and his imitators, bishops Neile and Laud, with the approbation of the king, far opposed to the healing counsels of Burleigh and Bacon, was just such as low-born and little-minded men, raised to power by fortune's caprice, are ever found to pursue. They studiously aggravated every difference, and irritated every wound. As the characteristic prejudice of the puritans was so bigoted an abhorrence of the Romish faith that they hardly deemed its followers to deserve the name of Christians, the prevailing high-church party took care to shock that prejudice by somewhat of a retrograde movement, and various seeming, or indeed real, accommodations of their tenets to those of the abjured religion. They began by preaching the divine right, as it is called, or absolute indispensability, of episcopacy; a doctrine of which the first traces, as I apprehend, are found about the end of Elizabeth's reign. They insisted on the necessity of episcopal succession regularly derived from the apostles. They drew an inference from this tenet, that ordinations by presbyters were in all cases null. And as this affected all the reformed churches in Europe except their own, the Lutherans not having preserved the succession of their bishops, while the Calvinists had altogether

consequently be regarded as a bounty on devotion. The severe puritan saw it in no such point of view. To his cynical temper day-games and morrice-dances were hardly tolerable on six days of the week; they were now recommended for the seventh. And his impious licence was to be promulgated in the church itself. It is indeed difficult to explain so unnecessary an insult on the precise clergy but by supposing an intention to harass those who should refuse compliance, influence of archbishop Abbot, was not cause, perhaps through the declaration itself enforced till the following reign.

The house of commons displayed their attachment to the puritan maxims, or their dislike of the prelatical clergy, by bringing in bills to enforce a greater strictness in this respect. A circumstance that occurred in the session of 1621 will serve to prove their fanatical violence. A bill having been brought in "for the better observance of the Sabbath, usually called Sunday," one Mr. Shepherd, sneering at the puritans, remarked that, as Saturday was dies Sabbati, this might be entitled a bill for the observance of Saturday, commonly called Sunday. This witticism brought on his head the wrath of that dangerous assembly. He was reprimanded on his knees, expelled the house, and saved from their fangs with no worse deem himself cheaply. The upper house sent down their bill with ebastisement. Yet when substituted for "tho Sabbath," observing "that 'the Lord's day' substituted for words of Judaism," the commons people do now much incline to the use of the word Sabbath instead of Sunday took no exception. This distinctive mark of the puritan party became in that age a permanent controversy sprang up about the end

§ 11. A far more prolific source of mutual hatred. Every one of my readers is of the same reign, well acquainted more or less with the theological tenets of original sin, free will, and predestination, variously taught in the schools, and debated by polemical writers for so many centuries; and few can be ignorant that these doctrines, having been very differently interpreted. Those who have no bias to warp their judgment will not perhaps have much hesitation in drawing their line between, though not at an equal distance between, the conflicting parties. It appears, on the one hand that the articles are worded on some of these doctrines with considerable ambiguity; whether we attribute this to the intrinsic obscurity of the subject, to the additional difficulties with which it had been entangled by theological systems, to discrepancy of opinion in the compilers, or to their solicitude to prevent disunion by selecting formulae which men of different sentiments might

principles on which it was founded, could dispose James to persecution, or even render the papist so obnoxious in his eyes as the puritan, yet he was long averse to anything like a general remission of the penal laws.

In the course, however, of that impolitic negotiation, which exposed him to all eyes as the dupe and tool of the court of Madrid, James was led on to promise concessions for which his protestant subjects were ill prepared. That court had wrought on his feeble mind by affected coyness about the infanta's marriage, with two private aims: to secure his neutrality in the war of the Palatinate, and to obtain better terms for the English catholics. On the treaty being almost concluded, the king, prince, and privy council swore to observe certain stipulated articles, by which the infanta was not only to have the exercise of her religion, but the education of her children till ten years of age. But the king was also sworn to private articles: that no penal laws should be put in force against the catholics, that there should be a perpetual toleration of their religion in private houses, that he and his son would use their authority to make parliament confirm and ratify these articles, and revoke all laws (as it is with strange latitude expressed) containing anything repugnant to the Roman catholic religion, and that they would not consent to any new laws against them. The prince of Wales separately engaged to procure the suspension or abrogation of the penal laws within three years, and to lengthen the term for the mother's education of their children from ten to twelve years, if it should be in his own power. He promised also to listen to catholic divines whenever the infanta should desire it.

These secret assurances, when they were whispered in England, might not unreasonably excite suspicion of the prince's wavering in his religion, which he contrived to aggravate by an act as imprudent as it was reprehensible. During his stay at Madrid, while his inclinations were still bent on concluding the marriage, the sole apparent obstacle being the pope's delay in forwarding the dispensation, he wrote a letter to Gregory XV., in reply to one received from him, in language evidently intended to give an impression of his favourable dispositions towards the Roman faith. The whole tenor of his subsequent life must have satisfied every reasonable inquirer into our history of Charles's real attachment to the Anglican church; nor could he have had any other aim than to facilitate his arrangements with the court of Rome by this deception. It would perhaps be uncandid to judge severely a want of ingenuousness which youth, love, and bad counsels may extenuate; yet I cannot help remarking that the letter is written with the precautions of a veteran in dissimulation; and while it is full of what might raise expectation, contains no special pledge that he

could be called on to redeem. But it was rather presumptuous to hope that he could foil the subtlest masters of artifice with their own weapons.

James, impatient for this ill-omened alliance, lost no time in fulfilling his private stipulations with Spain. He published a general pardon of all penalties already incurred for recusancy. It was designed to follow this up by a proclamation prohibiting the bishops, judges, and other magistrates to execute any penal statute against the catholics. But the lord-keeper, bishop Williams, hesitated at so unpopular a stretch of power. And, the rupture with Spain ensuing almost immediately, the king, with a singular defiance of all honest men's opinions, though the secret articles of the late treaty had become generally known, declared, in his first speech to parliament in 1624, that "he had only thought good sometimes to wink and connive at the execution of some penal laws, and not to go on so rigorously as at other times, but not to dispense with any, or to forbid or alter any, that concern religion; he never permitted or yielded, he never did think it with his heart, nor spoke it with his mouth."

When James, soon after this, not yet taught by experience to avoid a Romish alliance, demanded the hand of Henrietta Maria for his son, Richelieu thought himself bound by policy and honour as well as religion to obtain the same or greater advantages for the English catholics than had been promised in the former negotiation. Henrietta was to have the education of her children till they reached the age of twelve; thus were added two years, at a time of life when the mind becomes susceptible of lasting impressions, to the term at which, by the treaty with Spain, the mother's superintendence was to cease. Yet there is the strongest reason to believe that this condition was merely inserted for the honour of the French crown, with a secret understanding that it should never be executed. In fact, the royal children were placed at a very early age under protestant governors of the king's appointment; nor does Henrietta appear to have ever insisted on her right. That James and Charles should have incurred the scandal of this engagement, since the articles, though called private, must be expected to transpire, without any real intentions of performing it, is an additional instance of that arrogant contempt of public opinion which distinguished the Stuart family. It was stipulated in the same private articles that prisoners on the score of religion should be set at liberty, and that none should be molested in future. These promises were irregularly fulfilled, according to the terms on which Charles stood with his brother-in-law. Sometimes general orders were issued to suspend all penal laws against papists; again, by capricious change of policy, all officers and judges are directed to

proceed in their execution ; and this severity gave place in its turn to a renewed season of indulgence. If these alternations were not very satisfactory to the catholics, the whole scheme of lenity displeased and alarmed the protestants. Tolerance, in any extensive sense, of that proscribed worship, was equally abhorrent to the prelatist and the puritan ; though one would have winked at its peaceable and domestic exercise, which the other was zealous to eradicate. But, had they been capable of more liberal reasoning upon this subject, there was enough to justify their indignation at this attempt to sweep away the restrictive code established by so many statutes, and so long deemed essential to the security of their church, by an unconstitutional exertion of the prerogative prompted by no more worthy motive than compliance with foreign power, and tending to confirm suspicions of the king's wavering between the two religions, or his indifference to either. In the very first months of his reign, and while that parliament was sitting which has been reproached for its parsimony, he sent a fleet to assist the French king in blocking up the port of Rochelle ; and with utter disregard of the national honour, ordered the admiral who reported that the sailors would not fight against protestants to sail to Dieppo, and give up his ships into the possession of France. His subsequent alliance with the Hugonot party in consequence merely of Buckingham's unwarrantable hostility to France, founded on the most extraordinary motives, could not redeem, in the eyes of the nation, this instance of lukewarmness, to say the least, in the general cause of the Reformation.

§ 13. It was neither, however, the Arminian opinions of the higher clergy, nor even their supposed leaning towards those of Rome, that chiefly rendered them obnoxious to the commons. They had studiously inculcated that resistance to the commands of rulers was in every conceivable instance a heinous sin ; a tenet so evidently subversive of all civil liberty that it can be little worth while to argue about right and privilege, wherever it has obtained a real hold on the understanding and conscience of a nation. This had very early been adopted by the Anglican reformers, as a barrier against the disaffection of those who adhered to the ancient religion, and in order to exhibit their own loyalty in a more favourable light. The homily against wilful disobedience and rebellion was written on occasion of the rising of the northern earls in 1569, and is full of temporary and even personal allusions. But the same doctrine is enforced in others of those compositions, which enjoyed a kind of half authority in the English church. It is laid down in the canons of convocation in 1606. It is very frequent in the writings of English divines, those especially who were much about the court. And an unlucky preacher at Oxford, named

Knight, about 1622, having thrown out some intimation that subjects oppressed by their prince on account of religion might defend themselves by arms, that university, on the king's highly resenting such heresy, not only censured the preacher (who had the audacity to observe that the king by then sending aid to the French Hugonots of Rochelle, as was rumoured to be designed, had sanctioned his position), but pronounced a solemn decree that it is in no case lawful for subjects to make use of force against their princes, nor to appear offensively or defensively in the field against them. All persons promoted to degrees were to subscribe this article, and to take an oath that they not only at present detested the opposite opinion, but would at no future time entertain it.

Those however who most strenuously denied the abstract right of resistance to unlawful commands were by no means obliged to maintain the duty of yielding them an active obedience. In the case of religion, it was necessary to admit that God was rather to be obeyed than man. Nor had it been pretended, except by the most servile churchmen, that subjects had no positive rights, in behalf of which they might decline compliance with illegal requisitions. This however was openly asserted in the reign of Charles. Those who refused the general loan of 1626 had to encounter assaults from very different quarters, and were not only imprisoned, but preached at. Two sermons by Sibthorp and Mainwaring excited particular attention. These men, eager for preferment, which they knew the readiest method to attain, taught that the king might take the subject's money at his pleasure, and that no one might refuse his demand, on penalty of damnation. "Parliaments," said Mainwaring, "were not ordained to contribute any right to the king, but for the more equal imposing and more easy exacting of that which unto kings doth appertain by natural and original law and justice, as their proper inheritance annexed to their imperial crowns from their birth." These extravagances of rather obscure men would have passed with less notice if the government had not given them the most indecent encouragement. Abbot, archbishop of Canterbury, a man of integrity, but upon that account, as well as for his Calvinistic partialities, long since obnoxious to the courtiers, refused to license Sibthorp's sermon, alleging some unwarrantable passages which it contained. For no other cause than this, he was sequestered from the exercise of his archiepiscopal jurisdiction, and confined to a country house in Kent. The house of commons, after many complaints of those ecclesiastics, finally proceeded against Mainwaring by impeachment at the bar of the lords. He was condemned to pay a fine of 1000*l.*, to be suspended for three years from his ministry, and to be incapable of holding any ecclesiastical dignity. Yet the king almost immediately

pardoned Mainwaring, who became in a few years a bishop, as Sibthorp was promoted to an inferior dignity.

§ 14. There seems on the whole to be very little ground for censure in the proceedings of this illustrious parliament. I admit that, if we believe Charles I. to have been a gentle and beneficent monarch, incapable of harbouring any design against the liberties of his people, or those who stood forward in defence of their privileges, wise in the choice of his counsellors, and patient in listening to them, the commons may seem to have carried their opposition to an unreasonable length. But, if he had shown himself possessed with such notions of his own prerogative, no matter how derived, as could bear no effective control from fixed law, or from the nation's representatives; if he was hasty and violent in temper, yet stooping to low arts of equivocation and insincerity; whatever might be his estimable qualities in other respects, they could act, in the main, no otherwise than by endeavouring to keep him in the power of parliament, lest his power should make parliament but a name. Every popular assembly, truly zealous in a great cause, will display more heat and passion than cool-blooded men after the lapse of centuries may wholly approve. But so far were they from encroaching, as our Tory writers pretend, on the just powers of a limited monarch, that they do not appear to have conceived, they at least never hinted at, the securities without which all they had obtained or attempted would become ineffectual. No one member of that house, in the utmost warmth of debate, is recorded to have suggested the abolition of the court of star-chamber, or any provision for the periodical meeting of parliament. Though such remedies for the greatest abuses were in reality consonant to the actual unrepealed law of the land, yet, as they implied, in the apprehension of the generality, a retrenchment of the king's prerogative, they had not yet become familiar to their hopes. In asserting the illegality of arbitrary detention, of compulsory loans, of tonnage and poundage levied without consent of parliament, they stood in defence of positive rights won by their fathers, the prescriptive inheritance of Englishmen. Twelve years more of repeated aggressions taught the Long Parliament what a few sagacious men might perhaps have already suspected, that they must recover more of their ancient constitution from oblivion, that they must sustain its partial weakness by new securities, that, in order to render the existence of monarchy compatible with that of freedom, they must not only strip it of all it had usurped, but of something that was its own.

NOTE ON CHAPTER VII.

PETITION OF RIGHT.

3 CAR. I. C. 1.

The petition exhibited to his majesty by the lords spiritual and temporal, and commons, in this parliament assembled, concerning divers rights and liberties of the subjects, with the king's majesty's royal answer thereunto in full parliament.

To the king's most excellent majesty.

Humbly show unto our sovereign lord the king, the lords spiritual and temporal, and commons, in parliament assembled, that whereas it is declared and enacted by a statute made in the time of the reign of king Edward I., commonly called *Statutum de tallagio non concedendo*, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of king Edward III. it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and others the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound to make appearance and give answer before your privy council and in other

places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted: and divers other charges have been laid and levied upon your people in several counties by lords lieutenants, deputy lieutenants, commissioners for musters, justices of peace, and others, by command or direction from your majesty, or your privy council, against the laws and free customs of the realm.

III. And whereas also by the statute called "The Great Charter of the Liberties of England," it is declared and enacted, that no freeman may be taken or imprisoned, or to be diseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of king Edward III. it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them

house by the king's command, had been forcibly held down in the chair by some of the members, while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offences were supposed to be committed in parliament, and consequently not punishable in any other place. This brought forward the great question of privilege, on the determination of which the power of the house of commons, and consequently the character of the English constitution, seemed evidently to depend.

Freedom of speech, being implied in the nature of a representative assembly called to present grievances and suggest remedies, could not stand in need of any special law or privilege to support it. But it was also sanctioned by positive authority. The speaker demands it at the beginning of every parliament among the standing privileges of the house; and it had received a sort of confirmation from the legislature by an act passed in the fourth year of Henry VIII., on occasion of one Strode, who had been prosecuted and imprisoned in the Staunary court, for proposing in parliament some regulations for the tanners in Cornwall; which annuls all that had been done, or might hereafter be done, towards Strode, for any matter relating to the parliament, in words so strong as to form, in the opinion of many lawyers, a general enactment. The judges however held, on the question being privately sent to them by the king, that the statute concerning Strode was a particular act of parliament extending only to him and those who had joined with him to prefer a bill to the commons concerning tanners; but that, although the act were private and extended to them alone, yet it was no more than all other parliament-men, by privilege of the house, ought to have; namely, freedom of speech concerning matters there debated.

It appeared by a constant series of precedents, the counsel for Eliot and his friends argued, that the liberties and privileges of parliament could only be determined therein, and not by any inferior court; that the judges had often declined to give their opinions on such subjects, alleging that they were beyond their jurisdiction; that the words imputed to Eliot were in the nature of an accusation of persons in power which the commons had an undoubted right to prefer; that no one would venture to complain of grievances in parliament, if he should be subjected to punishment at the discretion of an inferior tribunal; that whatever instances had occurred of punishing the alleged offences of members after a dissolution were but acts of power, which no attempt had hitherto been made to sanction; finally, that the offences imputed might be punished in a future parliament.

The court were unanimous in holding that they had jurisdiction, though the alleged offences were committed in parliament, and that the defendants were bound to answer. The privileges of parliament

did not extend, even at the present, to the sale of the press, which was the point at issue, and all officers against the crown, said on their side to be punishable in the court of king's bench. On the party opposing, but in any other place, parliament was given that they should be imprisoned during the king's pleasure, and not released without being sorry for good behaviour, and making submission that Holles, as the greatest offender and speaker, should be fined in itself, Holles and Valentine to a smaller amount.

But, the most distinguished leader of the popular party, died in the Tower without any trial; to the ultimate loss required. In the last parliament the commons gave a vote on the illegality of all the proceedings, both as to the delay in granting their habeas corpus, and the committing their plea to the jurisdiction of the king's bench. But the subject was turned again in a more distant and more tranquil period. In the year 1667 the commons resolved that the act of 1 H. VIII. concerning Straile was a general law, "extending to maintain all and every the members of both houses of parliament, in all parliaments, for and touching any bills, or debates, reasonings, or declaring of any matter or matters in and concerning the parliament to be committed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament." They resolved also that the judgment given 5 Car. I. against sir John Elliot, Denzil Holles, and Benjamin Valentine, is an illegal judgment, and against the freedom and privilege of parliament. To these resolutions the lords gave their concurrence. And Holles, then became a peer, having brought the record of the king's bench by writ of error before them, they solemnly reversed the judgment. An important decision with respect to our constitutional law, which has established beyond controversy the great privilege of unlimited freedom of speech in parliament; unlimited, I mean, by any authority except that by which the house itself ought always to restrain indecent and disorderly language in its members. It does not, however, appear to be a necessary consequence, from the reversal of this judgment, that no actions committed in the house by any of its members are punishable in a court of law. The argument in behalf of Holles and Valentine goes indeed to this length; but it was admitted in the debate on the subject in 1667 that their plea to the jurisdiction of the king's bench could not have been supported as to the imputed riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in parliament. And it is obvious that the house could inflict no adequate punishment in the possible case of treason or felony committed within its walls; nor, if its power of imprisonment be limited to the session, in that of many smaller offences.

§ 3. The customs on imported merchandises were now rigorously enforced. But the late disensions in parliament, and the growing disposition to probe the legality of all acts of the crown, rendered the merchants more discontented than ever. Richard Chambers, having refused to pay any further duty for a bale of silks than might be required by law, was summoned before the privy council. In the presence of that board he was provoked to exclaim that in no part of the world, not even in Turkey, were the merchants so screwed and wrung as in England. For these hasty words an information was preferred against him in the star-chamber; and the court, being of opinion that the words were intended to make the people believe that his majesty's happy government might be termed Turkish tyranny, manifested their laudable abhorrence of such tyranny by sentencing him to pay a fine of 2000*l.*, and to make a humble submission. Chambers, a sturdy puritan, absolutely refused to subscribe the form of submission tendered to him, and was of course committed to prison. But the court of king's bench admitted him to bail on a *habeas corpus*; for which, as Whitelock tells us, they were reprimanded by the council.

§ 4. There were several instances, besides this just mentioned, wherein the judges manifested a more courageous spirit than they were able constantly to preserve; and the odium under which their memory labours for a servile compliance with the court, especially in the case of ship-money, renders it but an act of justice to record those testimonies they occasionally gave of a nobler sense of duty. They unanimously declared, when Charles expressed a desire that Felton, the assassin of the duke of Buckingham, might be put to the rack in order to make him discover his accomplices, that the law of England did not allow the use of torture. This is a remarkable proof that, amidst all the arbitrary principles and arbitrary measures of the time, a truer sense of the inviolability of law had begun to prevail, and that the free constitution of England was working off the impurities with which violence had stained it. For, though it be most certain that the law never recognised the use of torture, there had been many instances of its employment, and even within a few years. They declared about the same time, on a reference to them concerning certain disrespectful words alleged to have been spoken by one Pine against the king, that no words can of themselves amount to treason within the statute of Edward III.¹

§ 5. In pursuance of the system adopted by Charles's ministers, they had recourse to exactions, some odious and obsolete, some of

¹ This was a very important determination, and put an end to such tyrannical persecution of Roman Catholics for bare

expressions of opinion as had been used under Elizabeth and James.

very questionable legality, and others clearly against law. Of the former class may be reckoned the compositions for not taking the order of knighthood. The early kings of England, Henry III. and Edward I., very little in the spirit of chivalry, had introduced the practice of summoning their military tenants, holding 20*l.* per annum, to receive knighthood at their hands. Those who declined this honour were permitted to redeem their absence by a moderate fine. Elizabeth, once in her reign, and James, had availed themselves of this ancient right. But the change in the value of money rendered it far more oppressive than formerly, though limited to the holders of 40*l.* per annum in military tenure. Commissioners were now appointed to compound with those who had neglected some years before to obey the proclamation, summoning them to receive knighthood at the king's coronation. In particular instances very severe fines are recorded to have been imposed upon defaulters, probably from some political resentment.

§ 6. Still greater dissatisfaction attended the king's attempt to revive the ancient laws of the forests—those laws, of which, in elder times, so many complaints had been heard, exacting money by means of pretensions which long disuse had rendered dubious, and showing himself to those who lived on the borders of those domains in the hateful light of a litigious and encroaching neighbour. The earl of Holland held a court almost every year, as chief-justice in eyre, for the recovery of the king's forestal rights, which made great havoc with private property. No prescription could be pleaded against the king's title, which was to be found, indeed, by the inquest of a jury, but under the direction of a very partial tribunal. The royal forests in Essex were so enlarged that they were hyperbolically said to include the whole county. The earl of Southampton was nearly ruined by a decision that stripped him of his estate near the New Forest. The boundaries of Rockingham forest were increased from six miles to sixty, and enormous fines imposed on the trespassers; lord Salisbury being amerced in 20,000*l.*, lord Westmoreland in 19,000*l.*, Sir Christopher Hatton in 12,000*l.*² It is probable that a part of these was remitted.

§ 7. A greater profit was derived from a still more pernicious and indefensible measure, the establishment of a chartered company with exclusive privileges of making soap. The recent statute against monopolies seemed to secure the public against this species of grievance. Noy, however, the attorney-general, a lawyer of uncommon eminence, and lately a strenuous assertor of popular rights

² It is well known that Charles made Richmond Park by means of depriving many proprietors not only of common rights, but of their freehold lands. It is

not clear that they were ever compensated; but I think this probable, as the matter excited no great clamour in the long parliament.

in the house of commons, devised this project, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay eight pounds for every ton of soap made, as well as 10,000*l.* for their charter. For this they were empowered to appoint searchers, and exercise a sort of inquisition over the trade. Those dealers who resisted their interference were severely fined on informations in the star-chamber.

This precedent was followed in the erection of a similar company of starch-makers, and in a great variety of other grants, till monopolies, in transgression or evasion of the late statute, became as common as they had been under James or Elizabeth. The king, by a proclamation at York, in 1639, beginning to feel the necessity of diminishing the public odium, revoked all these grants. He annulled at the same time a number of commissions that had been issued in order to obtain money by compounding with offenders against penal statutes.

§ 8. The name of Noy has acquired an unhappy celebrity by a far more famous invention, which promised to realise the most sanguine hopes that could have been formed of carrying on the government for an indefinite length of time without the assistance of parliament. Shaking off the dust of ages from parchments in the Tower, this man of venal diligence and prostituted learning discovered that the seaports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay, there were instances of a similar demand upon some inland places. Noy himself died almost immediately afterwards. The first writ issued from the council in October, 1634. It was directed to the magistrates of London and other seaport towns. Reciting the depredations lately committed by pirates, and slightly adverting to the dangers imminent in a season of general war on the continent, it enjoins them to provide a certain number of ships of war of a prescribed tonnage and equipage; empowering them also to assess all the inhabitants for a contribution towards this armament according to their substance. The citizens of London humbly remonstrated that they conceived themselves exempt, by sundry charters and acts of parliament, from bearing such a charge. But the council peremptorily compelled their submission, and the murmurs of inferior towns were still more easily suppressed. This is said to have cost the city of London 35,000*l.*

§ 9. The desire of being at least prepared for war, as well as the general system of stretching the prerogative beyond all limits, suggested an extension of the former writs from the seaports to the whole kingdom. Finch, chief justice of the common pleas, has

the honour of this improvement on Noy's scheme. He was a man of little learning or respectability, a servile tool of the despotic cabal; who, as speaker of the last parliament, had, in obedience to a command from the king to adjourn, refused to put the question upon a remonstrance moved in the house. By the new writs for ship-money, properly so denominated, since the former had only demanded the actual equipment of vessels, for which inland counties were of course obliged to compound, the sheriffs were directed to assess every landholder and other inhabitant, according to their judgment of his means, and to enforce the payment by distress.

This extraordinary demand startled even those who had hitherto sided with the court. The ministers prudently resolved to secure not the law, but its interpreters, on their side. They published an extra-judicial opinion of the twelve judges, taken at the king's special command, according to the pernicious custom of that age. The judges gave it as their unanimous opinion that, "when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time, as he should think fit, for the defence and safeguard of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole judge both of the danger, and when and how the same was to be prevented and avoided."

This premature declaration of the judges, which was publicly read by the lord-keeper Coventry in the star-chamber, did not prevent a few intrepid persons from bringing the question solemnly before them, that the liberties of their country might at least not perish silently. The first that resisted was the gallant Richard Chambers, who brought an action against the lord-mayor for imprisoning him on account of his refusal to pay his assessment on the former writ. The magistrate pleaded the writ as a special justification; when Berkley, one of the judges of the king's bench, declared that there was a rule of law and a rule of government, that many things which could not be done by the first rule might be done by the other, and would not suffer counsel to argue against the lawfulness of ship-money. The next were lord Say and Mr. Hampden, both of whom appealed to the justice of their country; but the famous decision which has made the latter so illustrious put an end to all attempts at obtaining redress by course of law.

§ 10. Hampden was a gentleman of good estate in Buckinghamshire, whose assessment to the contribution for ship-money

demand from his county amounted only to twenty shillings.³ The cause, though properly belonging to the court of exchequer, was heard, on account of its magnitude, before all the judges in the exchequer-chamber. The precise question, so far as related to Mr. Hampden, was, Whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defence of the kingdom? It was argued by St. John and Holborne in behalf of Hampden; by the solicitor-general Littleton and the attorney-general Banks for the crown.

Passing slightly over the charter of the Conqueror, that his subjects shall hold their lands free from all unjust tallage, and the clause in John's Magna Charta, that no aid or sentage should be assessed but by consent of the great council (a provision not repeated in that of Henry III.), the advocates of Hampden relied on the 25 E. I., commonly called the *Confirmatio Chartarum*, which for ever abrogated all taxation without consent of parliament; and this statute itself they endeavoured to prove was grounded on requisitions very like the present, for the custody of the sea which Edward had issued the year before. Hence it was evident that the saving contained in that act for the accustomed aids and prizes could not possibly be intended, as the opposite counsel would suggest, to preserve such exactions as ship-money, but related to the established feudal aids, and to the ancient customs on merchandise. They dwelt less, however (probably through fear of having this exception turned against them), on this important statute than on one of more celebrity, but of very equivocal genuineness, denominated *De Tallagio non Concedendo*, which is nearly in the same words as the *Confirmatio Chartarum*, with the omission of the above-mentioned saving. More than one law enacted under Edward III. reasserts the necessity of parliamentary consent to taxation. It was indeed the subject of frequent remonstrance in that reign, and the king often infringed this right. But the perseverance of the commons was successful, and ultimately rendered the practice conformable to the law. In the second year of Richard II., the realm being in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out of parliament, advising that one should be speedily summoned. This precedent was the more important as it tended

³ The suit in the exchequer was due for property situate in the parish of Stoke Mandeville. This explains the smallness

of the sum immediately in question; it was assessed only on a portion of Hampden's lands.

to obviate that argument from peril and necessity on which the defenders of ship-money were wont to rely. But they met that specious plea more directly. They admitted that a paramount overruling necessity silences the voice of law; that in actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; that not only the sovereign, but each man in respect of his neighbour, might do many things absolutely illegal at other seasons; and this served to distinguish the present case from some strong acts of prerogative exerted by Elizabeth in 1588, when the liberties and religion of the people were in the most apparent jeopardy. But here there was no overwhelming danger; the nation was at peace with all the world: could the piracies of Turkish corsairs, or even the insolence of rival neighbours, be reckoned among those instant perils for which a parliament would provide too late?

Lastly, the Petition of Right, that noble legacy of a slandered parliament, reciting and confirming the ancient statutes, had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament. This latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of ship-money.

The king's counsel, in answer to these arguments, appealed that series of records which the diligence of Noy had collected. By far the greater part of these were commissions of array. But several, even of those addressed to inland towns (and, if there were no service by tenure in the case, it does not seem easy to distinguish these in principle from counties), bore a very strong analogy to the present. They were, however, in early times. No sufficient answer could be offered to the statutes that had prohibited unparliamentary taxation. The attempts made to elude their force were utterly ineffectual, as those who are acquainted with their emphatic language may well conceive. But the council of Charles I., and the hirelings who ate their bread, disdained to rest their claim of ship-money on obscure records, or on cavils about the meaning of statutes. They resorted rather to the favourite topic of the times, the intrinsic, absolute authority of the king. This the attorney-general Banks placed in the very front of his argument. "This power," says he, "is innate in the person of an absolute king, and in the persons of the kings of England. * * * For the king of England he is an absolute monarch; nothing can be given to an absolute prince but what is inherent in his person. He can do no wrong. He is the sole judge, and we ought not to question him. Where the law trusts we ought not

to distrust. The acts of parliament," he observed, "contained no express words to take away so high a prerogative; and tho' king's prerogative, even in lesser matters, is always saved wherever express words do not restrain it."

Seven of the twelve judges, namely, Finch, chief justice of the common pleas, Jones, Berkley, Vernon, Crawley, Trevor, and Weston, gave judgment for the crown. Brampton, chief justice of the king's bench, and Davenport, chief baron of the exchequer, pronounced for Hampden, but on technical reasons, and adhering to the majority on the principal question. Denham, another judge of the same court, being extremely ill, gave a short written judgment in favour of Hampden. But justices Croke and Hutton, men of considerable reputation and experience, displayed a most praiseworthy intrepidity in denying, without the smallest qualification, the alleged prerogative of the crown and the lawfulness of the writ for ship-money. They had unfortunately signed, along with the other judges, the above-mentioned opinion in favour of the right. For this they made the best apology they could, that their voice was concluded by the majority. But in truth it was the ultimate success that sometimes attends a struggle between conscience and self-interest or timidity.

The length to which this important cause was protracted, six months having elapsed from the opening speech of Mr. Hampden's counsel to the final judgment, was of infinite disservice to the crown. During this long period every man's attention was directed to the exchequer-chamber. The convincing arguments of St. John and Holborne, but still more the division on the bench, increased their natural repugnance to so unusual and dangerous a prerogative. It was manifest by the whole strain of the court lawyers that no limitations on the king's authority could exist but by the king's sufferance. This alarming tenet, long bruited among the churchmen and courtiers, now resounded in the halls of justice. But ship-money, in consequence, was paid with far less regularity and more reluctance than before. Whether in consequence of this unwillingness, or for other reasons, the revenue levied in different years under the head of ship-money is more fluctuating than we should expect from a fixed assessment; but may be reckoned at an average sum of 200,000*l*.

§ 11. The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, prohibiting or putting under restraint the importation of various articles, and the home growth of others, or establishing regulations for manufactures. Prices of several minor articles were fixed by proclamation; and in one instance this was extended to poultry, butter, and coals. The

king declares by a proclamation that he had incorporated all tradesmen and artificers within London and three miles round; so that no person might set up any trade without having served a seven years' apprenticeship, and without admission into such corporation. He prohibits, in like manner, any one from using the trade of a maltster or that of a brewer without admission into the corporations of maltsters or brewers erected for every county. I know not whether these projects were in any degree founded on the alleged pretext of correcting abuses, or were solely designed to raise money by means of these corporations. The illegality of these proclamations is most unquestionable.

The rapid increase of London continued to disquiet the court. It was the stronghold of political and religious disaffection. Hence the prohibitions of erecting new houses, which had begun under Elizabeth, were continually repeated.

The security of freehold rights had been the peculiar boast of the English law. The freeholder was recognised as the *liber homo* of Magna Charta, who could not be disseised of his tenements and franchises. His house was his castle, which the law respected, and which the king dared not enter. Even the public good must give way to his obstinacy; nor had the legislature itself as yet compelled any man to part with his lands for a compensation which he was loth to accept. The council and star-chamber had very rarely presumed to meddle with his right; never perhaps where it was acknowledged and ancient. But now this reverence of the common law for the sacredness of real property was derided by those who revered nothing as sacred but the interests of the church and crown. The privy council, on a suggestion that the demolition of some houses and shops in the vicinity of St. Paul's would show the cathedral to more advantage, directed that the owners should receive such satisfaction as should seem reasonable; or, on their refusal, the sheriff was required to see the buildings pulled down, "it not being thought fit the obstinacy of those persons should hinder so considerable a work."

In the great plantation of Ulster by James, the city of London had received a grant of extensive lands in the county of Derry, on certain conditions prescribed in their charter. The settlement became flourishing, and enriched the city. But the wealth of London was always invidious to the crown, as well as to the needy courtiers. On an information filed in the star-chamber for certain alleged breaches of their charter, it was not only adjudged to be forfeited to the king, but a fine of 70,000*l.* was imposed on the city. They paid this enormous mulct; but were kept out of their lands till restored by the long parliament.

The levies of tonnage and poundage without authority of parlia-

ment, the exaction of monopolies, the extension of the forests, the arbitrary restraints of proclamations, above all the general exaction of ship-monoy, form the principal articles of charge against the government of Charles, so far as relates to its inroads on the subject's property. These were maintained by a vigilant and unsparing exercise of jurisdiction in the court of star-chamber. I have, in another chapter, traced the revival of this great tribunal, probably under Henry VIII., in at least as formidable a shape as before the now-neglected statutes of Edward III. and Richard II., which had placed barriers in its way. (See pp. 28-30.)

§ 12. The records show the star-chamber to have taken cognizance both of civil suits and of offences throughout the time of the Tudors. But from the early part of Elizabeth's reign the star-chamber took a direct cognizance of any civil suits less frequently than before; partly, I suppose, from the increased business of the court of chancery and the admiralty court, which took away much wherein they had been wont to meddle; partly from their own occupation as a court of criminal judicature, which became more conspicuous as the other went into disuse. This criminal jurisdiction is that which rendered the star-chamber so potent and so odious an auxiliary of a despotic administration.

The offences principally cognizable in this court were forgery, perjury, riot, maintenance, fraud, libel, and conspiracy. But, besides these, every misdemeanor came within the proper scope of its inquiry; those especially of public importance, and for which the law, as then understood, had provided no sufficient punishment. For the judges interpreted the law in early times with too great narrowness and timidity; defects which, on the one hand, raised up the overruling authority of the court of chancery, as the necessary means of redress to the civil suitor who found the gates of justice barred against him by technical pedantry; and, on the other, brought this usurpation and tyranny of the star-chamber upon the kingdom by an absurd scrupulosity about punishing manifest offences against the public good. Thus, corruption, breach of trust, and malfeasance in public affairs, or attempts to commit felony, seem to have been reckoned not indictable at common law, and came in consequence under the cognizance of the star-chamber. In other cases its jurisdiction was merely concurrent; but the greater certainty of conviction, and the greater severity of punishment, rendered it incomparably more formidable than the ordinary benches of justice. The law of libel grew up in this unwholesome atmosphere, and was moulded by the plastic hands of successive judges and attorneys-general. Prosecution of this kind, according to Hudson, began to be more frequent from the last years of Elizabeth, when Coke was attorney-general; and it is easy to

conjecture what kind of interpretation they received. To hear a libel sung or read, says that writer, and to laugh at it, and make merriment with it, has ever been held a publication in law. The gross error that it is not a libel if it be true, has long since, he adds, been exploded out of this court.⁴

Among the exertions of authority practised in the star-chamber which no positive law could be brought to warrant, he enumerates "punishments of breach of proclamations before they have the strength of an act of parliament; which this court hath stretched as far as ever any act of parliament did."

The mode of process was sometimes of a summary nature; the accused person being privately examined, and his examination read in the court, if he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or, in certain cases, of a private relator. The party was brought before the court by writ of subpoena; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to the matters contained in the information, as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. The course of proceeding on the whole seems to have nearly resembled that of the chancery.

§ 13. It was held competent for the court to adjudge any punishment short of death. *Fine and imprisonment were of course the most usual.* The pillory, whipping, branding, and cutting off the ears, grew into use by degrees. It would be difficult to find precedents for the aggravated cruelties inflicted on Leighton, Lilburne, and others; but instances of cutting off the ears may be found under Elizabeth. The reproach, therefore, of arbitrary and illegal jurisdiction does not wholly fall on the government of Charles. They found themselves in possession of this almost unlimited authority. But doubtless, as far as the history of proceedings in the star-chamber are recorded, they seem much more numerous and violent in the present reign than in the two preceding. The object of drawing so large a number of criminal cases into the star-chamber seems to have been twofold: first, to inure men's minds to an authority more immediately connected with the crown than the ordinary courts of law, and less tied down to any rules of pleading or evidence; secondly, to eke out a scanty revenue by penalties and forfeitures. Absolutely regardless of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means, the councillors of the star-chamber inflicted

⁴ Hudson's Treatise of the Court of Star-Chamber, written about the end of James's reign.

such fines as no court of justice, even in the present reduced value of money, would think of imposing. A gentleman of the name of Allington was fined 12,000*l.* for marrying his niece. One who had sent a challenge to the earl of Northumberland was fined 5000*l.*; another for saying the earl of Suffolk was a base lord, 4000*l.* to him, and a like sum to the king. Sir David Forbes, for opprobrious words against lord Wentworth, incurred 5000*l.* to the king, and 3000*l.* to the party. On some soapboilers, who had not complied with the requisitions of the newly-incorporated company, mulcts were imposed of 1500*l.* and 1000*l.* It is evident that the strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof. From all that remains of proceedings in the star-chamber, they seem to have been very frequently as iniquitous as they were severe. In many celebrated instances the accused party suffered less on the score of any imputed offence than for having provoked the malice of a powerful adversary, or for notorious dissatisfaction with the existing government. Thus Williams, bishop of Lincoln, once lord-keeper, the favourite of king James, the possessor for a season of the power that was turned against him, experienced the rancorous and ungrateful malignity of Laud; who, having been brought forward by Williams into the favour of the court, not only supplanted by his intrigues, and incensed the king's mind against his benefactor, but harassed his retirement by repeated persecutions. It will sufficiently illustrate the spirit of these times to mention that the sole offence imputed to the bishop of Lincoln in the last information against him in the star-chamber was, that he had received certain letters from one Osbaldiston, master of Westminster school, wherein some contemptuous nickname was used to denote Laud. It did not appear that Williams had ever divulged these letters. But it was held that the concealment of a libellous letter was a high misdemeanor. Williams was therefore adjudged to pay 5000*l.* to the king and 3000*l.* to the archbishop, to be imprisoned during pleasure, and to make a submission; Osbaldiston to pay a still heavier fine, to be deprived of all his benefices, to be imprisoned and make submission, and moreover to stand in the pillory before his school in Dean's-yard, with his ears nailed to it. This man had the good fortune to conceal himself; but the bishop of Lincoln, refusing to make the required apology, lay about three years in the Tower, till released at the beginning of the long parliament.

It might detain me too long to dwell particularly on the punishments inflicted by the court of star-chamber in this reign. Two or three instances are so celebrated that I cannot pass them over. Leighton, a Scots divine, having published an angry libel

against the hierarchy, was sentenced to be publicly whipped at Westminster and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, to have the whole of this repeated the next week at Cheapside, and to suffer perpetual imprisonment in the Fleet. Lilburne, for dispersing pamphlets against the bishops, was whipped from the Fleet prison to Westminster, there set in the pillory, and treated afterwards with great cruelty. Prynne, a lawyer of uncommon erudition, and a zealous puritan, had printed a bulky volume, called *Histriomastix*, full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this he adverted to the appearance of courtesans on the Roman stage, and by a satirical reference in his index seemed to range all female actors in the class. The queen, unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at court. This passage was accordingly dragged to light by the malice of Peter Heylin, a chaplain of Laud, on whom the archbishop devolved the burthen of reading this heavy volume in order to detect its offences. Heylin, a bigoted enemy of everything puritanical, and not scrupulous as to veracity, may be suspected of having aggravated, if not misrepresented, the tendency of a book much more tiresome than seditious. Prynne, however, was already obnoxious, and the star-chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of 5000*l.*, and to suffer perpetual imprisonment. The dogged puritan employed the leisure of a gaol in writing a fresh libel against the hierarchy. For this, with two other delinquents of the same class, Burton a divine and Bastwick a physician, he stood again at the bar of that terrible tribunal. Their demeanour was what the court deemed intolerably contumacious, arising in fact from the despair of men who knew that no humiliation would procure them mercy. Prynne lost the remainder of his ears in the pillory; and the punishment was inflicted on them all with extreme and designed cruelty, which they endured, as martyrs always endure suffering, so heroically as to excite a deep impression of sympathy and resentment in the assembled multitude. They were sentenced to perpetual confinement in distant prisons. But their departure from London, and their reception on the road, were marked by signal expressions of popular regard; and their friends resorting to them even in Launceston, Chester, and Carnarvon castles, whither they were sent, an order of Council was made to transport them to the isles of the channel. It was the very first act of the long parliament to restore these victims of tyranny to their families. Punishments by mutilation, though not quite unknown to the English law, had been of rare occurrence; and thus

inflicted on men whose station appeared to render the ignominy of whipping and branding more intolerable, they produced much the same effect as the still greater cruelties of Mary's reign, in exciting a detestation for that ecclesiastical dominion which protected itself by means so atrocious.

§ 14. The person on whom public hatred chiefly fell, and who proved in a far more eminent degree than any other individual the evil genius of this unhappy sovereign, was Laud. His talents, though enabling him to acquire a large portion of theological learning, seem to have been by no means considerable. There cannot be a more contemptible work than his Diary; and his letters to Strafford display some smartness, but no great capacity. He managed indeed his own defence, when impeached, with some ability; but on such occasions ordinary men are apt to put forth a remarkable readiness and energy. Laud's inherent ambition had impelled him to court the favour of Buckingham, of Williams, and of both the kings under whom he lived, till he rose to the see of Canterbury on Abbot's death, in 1633. No one can deny that he was a generous patron of letters, and as warm in friendship as in enmity. But he had placed before his eyes the aggrandisement, first of the church, and next of the royal prerogative, as his end and aim in every action. Though not literally destitute of religion, it was so subordinate to worldly interest, and so blended in his mind with the impure alloy of temporal pride, that he became an intolerant persecutor of the puritan clergy, not from bigotry, which in its usual sense he never displayed, but systematic policy. And being subject, as his friends call it, to some infirmities of temper, that is choleric, vindictive, harsh, and even cruel to a great degree, he not only took a prominent share in the severities of the star-chamber, but, as his correspondence shows, perpetually lamented that he was restrained from going further lengths.

Laud's extraordinary favour with the king, through which he became a primo adviser in matters of state, rendered him secretly obnoxious to most of the council, jealous, as ministers must always be, of a churchman's overweening ascendancy. His faults, and even his virtues, contributed to this odium. For, being exempt from the thirst of lucre, and, though in the less mature state of his fortunes a subtle intriguer, having become frank through heat of temper and self-confidence, he discountenanced all schemes to serve the private interest of courtiers at the expence of his master's exhausted treasury, and went right onward to his object, the exaltation of the church and crown. He aggravated the invidiousness of his own situation, and gave an astonishing proof of his influence, by placing Juxon, bishop of London, a creature of his own, in the greatest of all posts, that of lord-treasurer.

Though Williams had lately been lord-keeper of the seal, it seemed more preposterous to place the treasurer's staff in the hands of a churchman, and of one so little distinguished even in his own profession, that the archbishop displayed his contempt of the rest of the council, especially Cottington, who aspired to that post, by such a recommendation. He had previously procured the office of secretary of state for Windebank. But, though overawed by the king's infatuated partiality, the faction adverse to Laud were sometimes able to gratify their dislike, or to manifest their greater discretion, by opposing obstacles to his impetuous spirit.

§ 15. Of these impediments, which a rash and ardent man calls lukewarmness, indolence, and timidity, he frequently complains in his correspondence with the lord deputy of Ireland—that lord Wentworth, so much better known by the title of earl of Strafford, which he only obtained the year before his death, that we may give it him by anticipation, whose doubtful fame and memorable end have made him nearly the most conspicuous character of a reign so fertile in recollections. Strafford had in his early years sought those local dignities to which his ambition probably was at that time limited, the representation of the county of York and the post of *custos rotulorum*, through the usual channel of court favour. Slighted by the duke of Buckingham, and mortified at the preference shown to the head of a rival family, sir John Saville, he began to quit the cautious and middle course he had pursued in parliament, and was reckoned among the opposers of the administration after the accession of Charles. He was one of those who were made sheriffs of their counties, in order to exclude them from the parliament of 1626. This inspired so much resentment, that he signalized himself as a refuser of the arbitrary loan exacted the next year, and was committed in consequence to prison. He came to the third parliament with a determination to make the court sensible of his power, and possibly with some real zeal for the liberties of his country. But patriotism unhappily, in his self-interested and ambitious mind, was the seed sown among thorns. He had never lost sight of his hopes from the court; even a temporary reconciliation with Buckingham had been effected in 1627, which the favourite's levity soon broke; and he kept up a close connexion with the treasurer Weston. Always jealous of a rival, he contracted a dislike for sir John Eliot, and might suspect that he was likely to be anticipated by that more distinguished patriot in royal favours. The hour of Wentworth's glory was when Charles assented to the Petition of Right, in obtaining which, and in overcoming the king's chicane and the hesitation of the lords, he had been pre-eminently conspicuous. From this moment he started aside from the path of true honour; and, being suddenly elevated

to the peerage and a great post, the presidency of the council of the North, commenced a splendid but baleful career, that terminated at the scaffold. After this fatal apostasy he not only lost all solicitude about those liberties which the Petition of Right had been designed to secure, but became their deadliest and most shameless enemy.

The council of the North was erected by Henry VIII. after the suppression of the great insurrection of 1536. It had a criminal jurisdiction in Yorkshire and the four more northern counties, as to riots, conspiracies, and acts of violence. It had also, by its original commission, a jurisdiction in civil suits, where either of the parties were too poor to bear the expense of a process at common law; in which case the council might determine, as it seems, in a summary manner, and according to equity. But this latter authority had been held illegal by the judges under Elizabeth. In fact, the lawfulness of this tribunal in any respect was, to say the least, highly problematical. It was regulated by instructions issued from time to time under the great seal. Wentworth spared no pains to enlarge the jurisdiction of his court. A commission issued in 1632, empowering the council of the North to hear and determine all offences, misdemeanors, suits, debates, controversies, demands, causes, things, and matters whatsoever therein contained, within certain precincts, namely, from the Humber to the Scots frontier. They were specially appointed to hear and determine divers offences, according to the course of the star-chamber, whether provided for by act of parliament or not; to hear complaints according to the rules of the court of chancery, and stay proceedings at common law by injunction; to attach persons by their serjeant in any part of the realm.

These inordinate powers, the soliciting and procuring of which, especially by a person so well versed in the laws and constitution, appears to be of itself a sufficient ground for impeachment, were abused by Strafford to gratify his own pride, as well as to intimidate the opposers of arbitrary measures. Proofs of this occur in the prosecution of sir David Foulis, in that of Mr. Bellasis, in that of Mr. Maleverer, for the circumstances of which I refer the reader to more detailed history.

Without resigning his presidency of the northern council, Wentworth was transplanted in 1633 to a still more extensive sphere, as lord-deputy of Ireland. This was the great scene on which he played his part: it was here that he found abundant scope for his commanding energy and imperious passions. The Bichelieu of that island, he made it wealthier in the midst of exactions, and, one might almost say, happier in the midst of oppressions. He curbed subordinate tyranny; but his own left a sting behind it

that soon spread a deadly poison over Ireland. But of his merits and his injustice towards that nation I shall find a better occasion to speak. Two well-known instances of his despotic conduct in respect of single persons may just be mentioned: the deprivation and imprisonment of the lord chancellor Loftus for not obeying an order of the privy council to make such a settlement as they prescribed on his son's marriage—a stretch of interference with private concerns which was aggravated by the suspected familiarity of the lord-deputy with the lady who was to reap advantage from it; and, secondly, the sentence of death passed by a council of war on lord Mountnorris, in Strafford's presence, and evidently at his instigation, on account of some very slight expressions which he had used in private society. Though it was never the deputy's intention to execute this judgment of his slaves, but to humiliate and trample upon Mountnorris, the violence and indecency of his conduct in it, his long persecution of the unfortunate prisoner after the sentence, and his glorying in the act at all times, and even on his own trial, are irrefragable proofs of such vindictive bitterness as ought, if there were nothing else, to prevent any good man from honouring his memory.

§ 16. The haughty and impetuous primate found a congenial spirit in the lord-deputy. They unbosomed to each other, in their private letters, their ardent thirst to promote the king's service by measures of more energy than they were permitted to exercise. Do we think the administration of Charles during the interval of parliaments rash and violent? They tell us it was over-cautious and slow. Do we revolt from the severities of the star-chamber? To Laud and Strafford they seemed the feebleness of excessive lenity. Do we cast on the crown-lawyers the reproach of having betrayed their country's liberties? We may find that, with their utmost servility, they fell far behind the expectations of the court, and their scruples were reckoned the chief shackles on the half-emanipated prerogative.

The system which Laud was longing to pursue in England, and which Strafford approved, is frequently hinted at by the word 'Thorough.' "For the state," says he, "indeed, my lord, I am for 'Thorough; for I see that both thick and thin stay somebody, where I conceive it should not, and it is impossible to go thorough alone."

The cruelties exercised on Prynne and his associates have generally been reckoned among the great reproaches of the primate. It has sometimes been insinuated that they were rather the act of other counsellors than his own. But his letters, as too often occurs, belie this charitable excuse. He expresses in them no sort of humane sentiment towards these unfortunate men, but the utmost indignation at the ascendency of those in power, which

connived at the public demonstrations of sympathy. "A little more quickness," he says, "in the government would cure this itch of libelling. But what can you think of Thorough when there shall be such slips in business of consequence? What say you to it, that Prynne and his fellows should be suffered to talk what they pleased while they stood in the pillory, and win acclamations from the people," &c.?

It is, however, remarkable that, with all Strafford's endeavours to render the king absolute, he did not intend to abolish the use of parliaments. This was apparently the aim of Charles; but this able minister entertained very different views. He urged accordingly the convocation of one in Ireland, pledging himself for the experiment's success. And in a letter to a friend, after praising all that had been done in it, "Happy it were," he proceeds, "if we might live to see the like in England." But let it not be hastily conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise. A parliament was looked upon by him as a mere instrument of the prerogative. Hence he was strongly against permitting any mutual understanding among its members, by which they might form themselves into parties, and acquire strength and confidence by previous concert. Acting on this principle, he kept a watch on the Irish parliament to prevent those intrigues which his experience in England had taught him to be the indispensable means of obtaining a control over the crown. Thus fettered and kept in awe, no one presuming to take a lead in debate from uncertainty of support, parliaments would have become such mockeries of their venerable name as the joint contempt of the court and nation must soon have annihilated. Yet so difficult is it to preserve this dominion over any representative body, that the king judged far more discreetly than Strafford in desiring to dispense entirely with their attendance.

§ 17. It was perfectly consonant to Laud's temper and principles of government to extirpate, as far as in him lay, the lurking seeds of disaffection to the Anglican church. But the course he followed could in nature have no other tendency than to give them nourishment. His predecessor Abbot had perhaps connived to a limited extent at some irregularities of discipline in the puritanical clergy. His hatred to popery and zeal for Calvinism, which undoubtedly were narrow and intolerant, as well as his avowed disapprobation of those churchmen who preached up arbitrary power, gained for this prelate the favour of the party denominated puritan. In all these respects no man could be more opposed to Abbot than his successor. Besides reviving the prosecutions for nonconformity in their utmost strictness, wherein many of the other bishops vied with their primate, he most injudiciously, not to say wickedly,

endeavoured, by innovations of his own, and by exciting alarms in the susceptible consciences of pious men, to raise up new victims whom he might oppress. Those who made any difficulty about his novel ceremonies, or even who preached on the Calvinistic side, were harassed by the high-commission court as if they had been actual schismatics. The most obnoxious, if not the most indefensible, of these prosecutions were for refusing to read what was called the Book of Sports; namely, a proclamation, or rather a renewal of that issued in the late reign, that certain feasts or wakes might be kept, and a great variety of pastimes used on Sundays after evening service. This was reckoned, as I have already observed, one of the tests of puritanism. But whatever superstition there might be in that party's judaical observance of the day they called the sabbath, it was in itself preposterous, and tyrannical in its intention, to enforce the reading in churches of this licence, or rather recommendation, of festivity. The precise clergy refused in general to comply with the requisition, and were suspended or deprived in consequence.

The resolution so evidently taken by the court to admit of no half-conformity in religion, especially after Laud had obtained an unlimited sway over the king's mind, convinced the puritans that England could no longer afford them an asylum. The state of Europe was not such as to encourage their emigration, though many were well received in Holland. But, turning their eyes to the newly-discovered regions beyond the Atlantic Ocean, they saw a secure place of refuge from present tyranny, and a boundless prospect for future hope. They obtained from the crown the charter of Massachusetts Bay in 1629. About three hundred and fifty persons, chiefly or wholly of the independent sect, sailed with the first fleet. So many followed in the subsequent years that these New England settlements have been supposed to have drawn near half a million of money from the mother-country before the civil wars. Men of a higher rank than the first colonists, and now become hopeless alike of the civil and religious liberties of England, men of capacious and commanding minds, formed to be the legislators and generals of an infant republic, the wise and cautious lord Say, the acknowledged chief of the independent sect; the brave, open, and enthusiastic lord Brook; sir Arthur Haslerig; Hampden, ashamed of a country for whose rights he had fought alone; Cromwell, panting with energies that he could neither control nor explain, and whose unconquerable fire was still wrapped in smoke to every eye but that of his kinsman Hampden, were preparing to embark for America, when Laud, for his own and his master's curse, procured an order of council to stop their departure. Besides the reflections which such an instance of destructive

innatuation must suggest, there are two things not unworthy to be remarked : first, that these chiefs of the puritan sect, far from entertaining those schemes of overturning the government at home that had been imputed to them, looked only in 1638 to escape from imminent tyranny ; and, secondly, that the views of the archbishop were not so much to render the church and crown secure from the attempts of disaffected men, as to gratify a malignant humour by persecuting them.

§ 18. These severe proceedings of the court and hierarchy became more odious on account of their suspected leaning, or at least notorious indulgence, towards popery. With some fluctuations, according to circumstances or changes of influence in the council, the policy of Charles was to wink at the domestic exercise of the catholic religion, and to admit its professors to pay compositions for recusancy which were not regularly enforced. The favour of the administration, as well as the antipathy that every parliament had displayed towards them, not unnaturally rendered the catholics, for the most part, assertors of the king's arbitrary power. This again increased the popular prejudice. But nothing excited so much alarm as the perpetual conversions to their faith. These had not been quite unusual in any age since the Reformation, though the balance had been very much inclined to the opposite side. They became, however, under Charles the news of every day ; protestant clergymen in several instances, but especially women of rank, becoming proselytes to a religion so seductive to the timid reason and susceptible imagination of that sex. Moreover all the innovations of the school of Laud were so many approaches, in the exterior worship of the church, to the Roman model. Pictures were set up or repaired ; the communion-table took the name of an altar ; it was sometimes made of stone ; obeisances were made to it ; the crucifix was sometimes placed upon it ; the dress of the officiating priests became more gaudy ; churches were consecrated with strange and mystical pageantry. These petty superstitions, which would of themselves have disgusted a nation accustomed to despise as well as abhor the pompous rites of the catholics, became more alarming from the evident bias of some leading churchmen to parts of the Romish theology. The doctrine of a real presence, distinguishable only by vagueness of definition from that of the church of Rome, was generally held. Montagu, bishop of Chichester, already so conspicuous, and justly reckoned the chief of the Romanising faction, went a considerable length towards admitting the invocation of saints ; prayers for the dead, which lead naturally to the tenet of purgatory, were vindicated by many ; in fact, there was hardly any distinctive opinion of the church of Rome which had not its abettors among the bishops, or those who

wrote under their patronage. The practice of auricular confession, which an aspiring clergy must so deeply regret, was frequently inculcated as a duty. And Laud gave just offence by a public declaration that in the disposal of benefices he should, in equal degrees of merit, prefer single before married priests. They incurred scarcely less odium by their dislike of the Calvinistic system, and by what ardent men construed into a dereliction of the protestant cause, a more reasonable and less dangerous theory on the nature and reward of human virtue than that which the fanatical and presumptuous spirit of Luther had held forth as the most fundamental principle of his Reformation.

It must be confessed that these English theologians were less favourable to the papal supremacy than to most other distinguishing tenets of the catholic church. Yet even this they were inclined to admit in a considerable degree, as a matter of positive, though not divine, institution; content to make the doctrine and discipline of the fifth century the rule of their bastard reform. An extreme reverence for what they called the primitive church had been the source of their errors. The first reformers had paid little regard to that authority. But as learning, by which was then meant an acquaintance with ecclesiastical antiquity, grew more general in the church, it gradually inspired more respect for itself; and men's judgment in matters of religion came to be measured by the quantity of their erudition. The sentence of the early writers, including the fifth and perhaps sixth centuries, if it did not pass for infallible, was of prodigious weight in controversy. No one in the English church seems to have contributed so much towards this relapse into superstition as Andrews, bishop of Winchester, a man of eminent learning in this kind, who may be reckoned the founder of the school wherein Laud was the most prominent disciple.

A characteristic tenet of this party was, as I have already observed, that episcopal government was indispensably requisite to a Christian church. Hence they treated the presbyterians with insolence abroad and severity at home.

It is alleged by one who had much access to Laud, that his object in these accommodations was to draw over the more moderate Romanists to the English church, by extenuating the differences of her faith, and rendering her worship more palatable to their prejudices.⁵ There was, however, good reason to suspect, from the same writer's account, that some leading ecclesiastics entertained schemes of a complete re-union; and later discoveries have abundantly confirmed this suspicion.

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should be established, and consequently that an English agent should constantly reside at the court of Rome, by the nominal appointment of the queen, but empowered to conduct the various negotiations in hand.

§ 20. This exceeding boldness of the catholic party, and their success in conversions, which were, in fact, less remarkable for their number than for the condition of the persons, roused the primate himself to some apprehension. He preferred a formal complaint to the king in council against the resort of papists to the queen's chapel, and the insolence of some active zealots about the court. Henrietta, who had courted his friendship, and probably relied on his connivance, if not support, seems never to have forgiven this unexpected attack. Laud gave another testimony of his unabated hostility to popery by republishing with additions his celebrated conference with the jesuit Fisher, a work reckoned the great monument of his learning and controversial acumen. This conference had taken place many years before, at the desire and in the presence of the countess of Buckingham, the duke's mother. Those who are conversant with literary and ecclesiastical anecdote must be aware, that nothing was more usual in the seventeenth century than such single combats under the eye of some fair lady, whose religious faith was to depend upon the victory.

§ 21. At this time Chillingworth had been induced, like so many others, to pass over to the Roman church. The act of transition, it may be observed, from a system of tenets wherein men had been educated, was in itself a vigorous exercise of free speculation, and might be termed the suicide of private judgment. But in Chillingworth's restless mind there was an inextinguishable scepticism that no opiates could subdue; yet a scepticism of that species which belongs to a vigorous, not that which denotes a feeble, understanding. Dissatisfied with his new opinions, of which he had never been really convinced, he panted to breathe the freer air of protestantism, and, after a long and anxious investigation, returned to the English church. He well redeemed any censure that might have been thrown on him, by his great work in answer to the jesuit Knott, entitled *The Religion of Protestants a Safe Way to Salvation*. In the course of his reflections he had perceived the insecurity of resting the Reformation on any but its original basis, the independency of private opinion. This, too, he asserted with a fearlessness and consistency hitherto little known, even within the protestant pale; combining it with another principle, which the zeal of the early reformers had rendered them unable to perceive, and for want of which the adversary had perpetually discomfited them, namely, that the errors of conscientious men do not forfeit the favour of God. This endeavour to mitigate the dread of forming

mistaken judgments in religion runs through the whole work of Chillingworth, and marks him as the founder, in this country, of what has been called the latitudinarian school of theology. In this view, which has practically been the most important one of the controversy, it may pass for an anticipated reply to the most brilliant performance on the opposite side, the History of the Variations of Protestant Churches; and those who from a delight in the display of human intellect, or from more serious motives of inquiry, are led to these two masterpieces, will have seen, perhaps, the utmost strength that either party, in the great schism of Christendom, has been able to put forth.

§ 22. The latitudinarian principles of Chillingworth appear to have been confirmed by his intercourse with a man, of whose capacity his contemporaries entertained so high an admiration, that he acquired the distinctive appellation of the Ever-memorable John Hales. This testimony of so many enlightened men is not to be disregarded, even if we should be of opinion that the writings of Hales, though abounding with marks of an unshackled mind, do not quite come up to the promise of his name. He had, as well as Chillingworth, borrowed from Leyden, perhaps a little from Racow, a tone of thinking upon some doctrinal points, as yet nearly unknown, and therefore highly obnoxious, in England. More hardy than his friend, he wrote a short treatise on schism, which tended, in pretty blunt and unlimited language, to overthrow the scheme of authoritative decisions in any church, pointing at the imposition of unnecessary ceremonies and articles of faith as at once the cause and the apology of separation. This, having been circulated in manuscript, came to the knowledge of Laud, who sent for Hales to Lambeth, and questioned him as to his opinions on that matter. Hales, though willing to promise that he would not publish the tract, receded not a jot from his free notions of ecclesiastical power; which he again advisedly maintained in a letter to the archbishop, now printed among his works. The result was equally honourable to both parties; Laud bestowing a canonry of Windsor on Hales, which, after so bold an avowal of his opinion, he might accept without the slightest reproach. A behaviour so liberal forms a singular contrast to the rest of this prelate's history. It is a proof, no doubt, that he knew how to set such a value on great abilities and learning, as to forgive much that wounded his pride. But besides that Hales had not made public this treatise on schism, for which I think he could not have escaped the high-commission court, he was known by Laud to stand far aloof from the Calvinistic sectaries, having long since embraced in their full extent the principles of Episcopius, and to mix no alloy of political faction with the philosophical hardness of his speculations.

These two remarkable ornaments of the English church, who dwelt apart like stars, to use the fine expression of a living poet, from the vulgar bigots of both her factions, were accustomed to meet, in the society of some other eminent persons, at the house of lord Falkland, near Burford. One of those, who, then in a ripe and learned youth, became afterwards so conspicuous a name in our annals and our literature, Mr. Hyde, the chosen bosom-friend of his host, has dwelt with affectionate remembrance on the conversations of that mansion. His marvellous talent of delineating character—a talent, I think, unrivalled by any writer (since, combining the bold outline of the ancient historians with the analytical minuteness of De Retz and St. Simon, it produces a higher effect than either)—is never more beautifully displayed than in that part of the memoirs of his life where Falkland, Hales, Chillingworth, and the rest of his early friends, pass over the scene.

§ 23. For almost thirty ensuing years Hyde himself becomes the companion of our historical reading. Seven folio volumes contain his History of the Rebellion, his Life, and the Letters, of which a large portion are his own.⁶ We contract an intimacy with an author who has poured out to us so much of his heart. Though lord Clarendon's chief work seems to me not accurately styled a history, belonging rather to the class of memoirs, yet the very reasons of this distinction, the long circumstantial narrative of events wherein he was engaged, and the slight notice of those which he only learnt from others, render it more interesting, if not

⁶ The genuine text of the History has only been published in 1826. A story, as is well known, obtained circulation within thirty years after its first appearance, that the manuscript had been materially altered or interpolated. This was positively denied, and supposed to be wholly disproved. It turns out however that, like many other anecdotes, it had a considerable basis of truth, though with various erroneous additions, and probably wilful misrepresentations. For though the worthy editor of the original manuscript endeavours, not quite necessarily, to excuse or justify the original editors (who seem to have been Sprat and Aldrich, with the sanction probably of lords Clarendon and Rochester, the historian's sons) for what they did, and even singularly asserts that "the present collation satisfactorily proves that they have in no one instance added, suppressed, or altered any historical fact" (Adver. to edit. 1826, p. v.), yet it is certain that, besides the perpetual impertinence of mending the style, there are several

hundred variations which affect the sense, introduced from one motive or another, and directly contrary to the laws of literary integrity. The long passages inserted in the appendixes to several volumes of this edition contain surely historical facts that had been suppressed. And, even with respect to subordinate alterations, made for the purpose of softening traits of the author's angry temper, or correcting his mistakes, the general effect of taking such liberties with a work is to give it an undue credit in the eyes of the public, and to induce men to believe matters upon the writer's testimony, which they would not have done so readily if his errors had been fairly laid before them. Clarendon indeed is so strangely loose in expression as well as incorrect in statement, that it would have been impossible to remove his faults of this kind without writing again half the History; but it is certain that great trouble was very unduly taken to lighten their impression upon the world.

more authentic. Conformably to human feelings, though against the rules of historical composition, it bears the continual impress of an intense concern about what he relates. This depth of personal interest united frequently with an eloquence of the heart and imagination that struggles through an involved, incorrect, and artificial diction, makes it, one would imagine, hardly possible for those most alien from his sentiments to read his writings without some portion of sympathy. But they are on this account not a little dangerous to the soundness of our historical conclusions; the prejudices of Clarendon, and his negligence as to truth, being full as striking as his excellencies, and leading him not only into many erroneous judgments, but into frequent inconsistencies.

These inconsistencies are nowhere so apparent as in the first or introductory book of his History, which professes to give a general view of the state of affairs before the meeting of the long parliament. It is certainly the most defective part of his work. A strange mixture of honesty and disingenuousness pervades all he has written of the early years of the king's reign; retracting, at least in spirit, in almost every page what has been said in the last, from a constant fear that he may have admitted so much against the government as to make his readers impute too little blame to those who opposed it. Thus, after freely censuring the exactions of the crown, whether on the score of obsolete prerogative or without any just pretext at all, especially that of ship-money, and confessing that "those foundations of right, by which men valued their security, were never, to the apprehension and understanding of wise men, in more danger of being destroyed," he turns to dwell on the prosperous state of the kingdom during this period, "enjoying the greatest calm and the fullest measure of felicity that any people in any age for so long time together have been blessed with," till he works himself up to a strange paradox, that "many wise men thought it a time wherein those two adjuncts, which Nerva was deified for uniting, Imperium et Libertas, were as well reconciled as is possible."

We may acknowledge without hesitation that the kingdom had grown during this period into remarkable prosperity and affluence. The rents of land were very considerably increased, and large tracts reduced into cultivation. The manufacturing towns, the seaports, became more populous and flourishing. The metropolis increased in size with a rapidity that repeated proclamations against new buildings could not restrain. The country houses of the superior gentry throughout England were built on a scale which their descendants, even in days of more redundant affluence, have seldom ventured to emulate. The kingdom was indebted for this prosperity to the spirit and industry of the people, to the laws

which secure the commons from oppression, and which, as between man and man, were still fairly administered; to the opening of fresh channels of trade in the eastern and western worlds (rivulets, indeed, as they seem to us who float in the full tide of modern commerce, yet at that time no slight contributions to the stream of public wealth); but, above all, to the long tranquillity of the kingdom, ignorant of the sufferings of domestic, and seldom much affected by the privations of foreign, war. It was the natural course of things that wealth should be progressive in such a land. Extreme tyranny, such as that of Spain in the Netherlands, might, no doubt, have turned back the current. A less violent but long-continued despotism, such as has existed in several European monarchies, would, by the corruption and incapacity which absolute governments engender, have retarded its advance. The administration of Charles was certainly not of the former description. Yet it would have been an excess of loyal stupidity in the nation to have attributed their riches to the wisdom or virtue of the court, which had injured the freedom of trade by monopolies and arbitrary proclamations, and driven away industrious manufacturers by persecution.

If we were to draw our knowledge from no other book than lord Clarendon's History it would still be impossible to avoid the inference that misconduct on the part of the crown, and more especially of the church, was the chief, if not the sole, cause of these prevailing discontents.

§ 24. It is difficult to pronounce how much longer the nation's signal forbearance would have held out, if the Scots had not precipitated themselves into rebellion. There was still a confident hope that parliament must soon or late be assembled, and it seemed equally impolitic and unconstitutional to seek redress by any violent means. The patriots, too, had just cause to lament the ambition of some whom the court's favour subdued, and the levity of many more whom its vanities allured. But the unexpected success of the tumultuous rising at Edinburgh against the service-book revealed the impotence of the English government. Destitute of money, and neither daring to ask it from a parliament, nor to extort it by any fresh demand from the people, they hesitated whether to employ force or to submit to the insurgents. In the exchequer, as lord Northumberland wrote to Strafford, there was but the sum of 200*l*.; with all the means that could be devised, not above 110,000*l*. could be raised; the magazines were all unfurnished, and the people were so discontented by reason of the multitude of projects daily imposed upon them, that he saw reason to fear a great part of them would be readier to join with the Scots than to draw their swords in the king's service. Strafford

himself dissuaded a war in such circumstances, though hardly knowing what other course to advise. In this imminent necessity the king had recourse to those who had least cause to repine at his administration. The catholic gentry, at the powerful interference of their queen, made large contributions towards the campaign of 1639.

The pacification, as it was termed, of Berwick, in the summer of 1639, has been represented by several historians as a measure equally ruinous and unaccountable. That it was so far ruinous as it formed one link in the chain that dragged the king to destruction, is most evident; but it was both inevitable and easy of explanation. The treasury, whatever Clarendon and Hume may have said, was perfectly bankrupt. The citizens of London, on being urged by the council for a loan, had used as much evasion as they dared. The writs for ship-money were executed with greater difficulty, several sheriffs willingly acquiescing in the expenses made by their counties. The Scots were enthusiastic, nearly unanimous, and entire masters of their country. The English nobility in general detested the archbishop, to whose passion they ascribed the whole mischief, and feared to see the king become despotic in Scotland. If the terms of Charles's treaty with his revolted subjects were unsatisfactory and indefinite, enormous in concession, and yet affording a pretext for new encroachments, this is no more than the common lot of the weaker side.

There was one possible, though not under all the circumstances very likely, method of obtaining the sinews of war—the convocation of parliament. This many, at least, of the king's advisers appear to have long desired, could they but have vanquished his obstinate reluctance. This is an important observation: Charles, and he perhaps alone, unless we reckon the queen, seems to have taken a resolution of superseding absolutely and for ever the legal constitution of England. The judges, the peers, lord Strafford, nay, if we believe his dying speech, the primate himself, retained enough of respect for the ancient laws to desire that parliaments should be summoned whenever they might be expected to second the views of the monarch. They felt that the new scheme of governing by proclamations and writs of ship-money could not and ought not to be permanent in England. The king reasoned more royally, and indeed much better. He well perceived that it was vain to hope for another parliament so constituted as those under the Tudors. He was ashamed that his brothers of France and Spain should have achieved a work which the sovereign of England, though called an absolute king by his courtiers, had scarcely begun. All mention, therefore, of calling parliament grated on his ear. The declaration published at the dissolution of the last, that he should account

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great change became the common theme. "It is impossible," says lord Northumberland, at that time a courtier, "that thing can long continue in the condition they are now in; so general a defection in this kingdom hath not been known in the memory of any." Several of those who thought most deeply on public affairs now entered into a private communication with the Scots insurgents. The king meanwhile experienced aggravated misfortune and ignominy in his military operations. Ship-money indeed was enforced with greater rigour than before, several sheriffs and the lord mayor of London being prosecuted in the star-chamber for neglecting to levy it. Some citizens were imprisoned for refusing a loan. A new imposition was laid on the counties, under the name of coat-and-conduit-money, for clothing and defraying the travelling charges of the new levies. A state of actual invasion, the Scots having passed the Tweed, might excuse some of these irregularities, if it could have been forgotten that the war itself was produced by the king's impolicy, and if the nation had not been prone to see friends and deliverers rather than enemies in the Scottish army. They were, at the best indeed, troublesome and expensive guests to the northern counties which they occupied; but the cost of their visit was justly laid at the king's door. Various arbitrary resources having been suggested in the council, and abandoned as inefficient and impracticable—such as the seizing the merchants' bullion in the Mint, or issuing a debased coin—the unhappy king adopted the hopeless scheme of convening a great council of all the peers at York, as the only alternative of a parliament. It was foreseen that this assembly would only advise the king to meet his people in a legal way. The public voice could no longer be suppressed. The citizens of London presented a petition to the king, complaining of grievances, and asking for a parliament. This was speedily followed by one signed by twelve peers of popular character. The lords assembled at York almost unanimously concurred in the same advice, to which the king, after some hesitation, gave his assent. They had more difficulty in bringing about a settlement with the Scots: the English army, disaffected and undisciplined, had already made an inglorious retreat; and even Strafford, though passionately against a treaty, did not venture to advise an engagement. The majority of the peers, however, overruled all opposition; and in the alarming posture of his affairs, Charles had no resource but the dishonourable pacification of Ripon. Anticipating the desertion of some who had partaken in his councils, and conscious that others would more stand in need of his support than be capable of affording any, he awaited in fearful suspense the meeting of parliament.

CHAPTER IX.

FROM THE MEETING OF THE LONG PARLIAMENT TO
THE BEGINNING OF THE CIVIL WAR.

§ 1 Character of Long Parliament. § 2. Its salutary Measures. Triennial Bill. § 3 Other beneficial Laws. Abolition of Star-chamber and High Commission Courts. Observations. § 4. Impeachment of Strafford. Discussion of Its Justice. § 5. Act against Dissolution of Parliament without Its Consent. § 6. Innovations meditated in the Church. § 7 Schism in the Constitutional Party Remonstrance of November, 1641. § 8. Suspicions of the King's Sincerity. Attempt to Seize the Five Members. § 9. Question of the Militia. § 10. Historical Sketch of Military Force in England § 11. Encroachments of the Parliament. § 12. Nineteen Propositions. § 13. Discussion of the respective Claims of the two Parties to Support. Faults of both.

§ 1. WE are now arrived at that momentous period in our history which no Englishman ever regards without interest, and few without prejudice; the period from which the factions of modern times trace their divergence, which, after the lapse of almost two centuries, still calls forth the warm emotions of party-spirit, and affords a test of political principles; at that famous parliament, the theme of so much eulogy and of so much reproach; that synod of inflexible patriots with some, that conclave of traitorous rebels with others; that assembly, we may more truly say, of unequal virtue and chequered fame, which, after having acquired a higher claim to our gratitude, and effected more for our liberties, than any that had gone before or that has followed, ended by subverting the constitution it had strengthened, and by sinking in its decrepitude, and amidst public contempt, beneath a usurper it had blindly elevated to power.

§ 2. It seems agreeable to our plan, first to bring together those admirable provisions by which this parliament restored and consolidated the shattered fabric of our constitution, before we advert to its measures of more equivocal benefit, or its fatal errors; an arrangement not very remote from that of mere chronology, since the former were chiefly completed within the first nine months of its session, before the king's journey to Scotland in the summer of 1641.

It must, I think, be admitted by every one who concurs in the representation given in this work, and especially in the last chapter, of the practical state of our government, that some new securities of a more powerful efficacy than any which the existing laws held forth were absolutely indispensable for the preservation of English

liberties and privileges. Nothing could be more obvious than that the excesses of the late unhappy times had chiefly originated in the long intermission of parliaments. No lawyer would have dared to suggest ship-money with the terrors of a house of commons before his eyes. But the king's known resolution to govern without parliaments gave bad men more confidence of impunity. This resolution was not likely to be shaken by the unpalatable chastisement of his servants and redress of abuses, on which the present parliament was about to enter. A statute as old as the reign of Edward III. had already provided that parliaments should be held "every year, or oftener if need be." But this enactment had in no age been respected. It was certain that, in the present temper of the administration, a law simply enacting that the interval between parliaments should never exceed three years would prove wholly ineffectual. In the famous act therefore for triennial parliaments, the first fruits of the commons' laudable zeal for reformation, such provisions were introduced as grated harshly on the ears of those who valued the royal prerogative above the liberties of the subject, but without which the act itself might have been dispensed with. Every parliament was to be ipso facto dissolved at the expiration of three years from the day of its first session, unless actually sitting at the time, and in that case at its first adjournment or prorogation. The chancellor or keeper of the great seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under pain of disability to hold his office, and further punishment: in case of his failure to comply with this provision, the peers were enabled and enjoined to meet at Westminster, and to issue writs to the sheriffs; the sheriffs themselves, should the peers not fulfil this duty, were to cause elections to be duly made; and, in their default, at a prescribed time the electors themselves were to proceed to choose their representatives. No future parliament was to be dissolved or adjourned without its own consent in less than fifty days from the opening of its session. To this important bill the king, with some apparent unwillingness, gave his assent. It effected, indeed, a strange revolution in the system of his government. The nation set a due value on this admirable statute, the passing of which they welcomed with bonfires and every mark of joy.

§ 2. After laying this solid foundation for the maintenance of such laws as they might deem necessary, the house of commons proceeded to cut away the more flagrant and recent usurpations of the crown. They passed a bill declaring ship-money illegal, and annulling the judgment of the exchequer chamber against Mr. Hampden. They put an end to another contested prerogative, which, though incapable of vindication on the authority, had

more support from a usage of fourscore years—the levying of customs on merchandise. In an act granting the king tonnage and poundage it is “declared and enacted that it is, and hath been, the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever, ought or may be laid or imposed upon any merchandise exported or imported by subjects, denizens, or aliens, without common consent in parliament.” This is the last statute that has been found necessary to restrain the crown from arbitrary taxation, and may be deemed the complement of those numerous provisions which the virtue of ancient times had extorted from the first and third Edwards.

Yet these acts were hardly so indispensable, nor wrought so essential a change in the character of our monarchy, as that which abolished the star-chamber. This act abrogates all exercise of jurisdiction, properly so called, whether of a civil or criminal nature, by the privy council as well as the star-chamber. The power of examining and committing persons charged with offences is by no means taken away; but it is enacted, that every person committed by the council or any of them, or by the king’s special command, may have his writ of habeas corpus; in the return to which, the officer in whose custody he is shall certify the true cause of his commitment, which the court from whence the writ has issued shall within three days examine, in order to see whether the cause thus certified appear to be just and legal or not, and do justice accordingly by delivering, bailing, or remanding the party. Thus fell the great court of star-chamber, and with it the whole irregular and arbitrary practice of government, that had for several centuries so thwarted the operation and obscured the light of our free constitution, that many have been prone to deny the existence of those liberties which they found so often infringed, and to mistake the violations of law for its standard.

With the court of star-chamber perished that of the high-commission, a younger birth of tyranny, but perhaps even more hateful, from the peculiar irritation of the times. It had stretched its authority beyond the tenor of the act of Elizabeth whereby it had been created, and which limits its competence to the correction of ecclesiastical offences according to the known boundaries of ecclesiastical jurisdiction, assuming a right not only to imprison but to fine, the laity, which was generally reckoned illegal. The statute repealing that of Elizabeth, under which the high commission existed, proceeds to take away from the ecclesiastical courts all power of inflicting temporal penalties, in terms so large, and doubtless not inadvertently employed, as to render their jurisdiction nugatory. This part of the act was repealed after the Restoration; and, like the other measures of that time, with little

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care to prevent the recurrence of those abuses which had provoked its enactments.

A single clause in the act that abolished the star-chamber was sufficient to annihilate the arbitrary jurisdiction of several other irregular tribunals, grown out of the despotic temper of the Tudor dynasty:—the court of the president and council of the North, long obnoxious to the common lawyers, and lately the sphere of Strafford's tyrannical arrogance; the court of the president and council of Wales and the Welsh marches, which had pretended, as before mentioned, to a jurisdiction over the adjacent counties of Salop, Worcester, Hereford, and Gloucester; with those of the duchy of Lancaster and county palatine of Chester. These, under various pretexts, had usurped so extensive a cognizance as to deprive one-third of England of the privileges of the common law. The jurisdiction, however, of the two latter courts in matters touching the king's private estate has not been taken away by the statute. Another act afforded remedy for some abuses in the stannary courts of Cornwall and Devon. Others retrenched the vexatious prerogative of purveyance, and took away that of compulsory knighthood. And one of greater importance put an end to a fruitful source of oppression and complaint by determining forever the extent of royal forests, according to their boundaries in the twentieth year of James, annulling all the perambulations and inquests by which they had subsequently been enlarged.

I must here reckon, among the beneficial acts of this parliament, one that passed some months afterwards, after the king's return from Scotland, and perhaps the only measure of that second period on which we can bestow unmixed commendation. The delays and uncertainties of raising troops by voluntary enlistment had led to the usage of pressing soldiers for service, whether in Ireland or on foreign expeditions. This prerogative seeming dangerous and oppressive, as well as of dubious legality, it is recited in the preamble of an act empowering the king to levy troops by this compulsory method for the special exigency of the Irish rebellion, that, "by the laws of this realm, none of his majesty's subjects might to be impressed or compelled to go out of his country to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions." The king, in a speech from the throne, adverted to this bill while passing through the houses, as an invasion of his prerogative. This notice of a parliamentary proceeding the commons presented as a breach of their privilege; and having obtained the consent of the lords to a joint remonstrance, the king, who was in no state to maintain his objection, gave his assent to the bill. In

the reigns of Elizabeth and James we have seen frequent instances of the crown's interference as to matters debated in parliament. But from the time of the long parliament the law of privilege, in this respect, has stood on an unshaken basis.

These are the principal statutes which we owe to this parliament. They give occasion to two remarks of no slight importance. In the first place, it will appear, on comparing them with our ancient laws and history, that they made scarce any material change in our constitution such as it had been established and recognized under the house of Plantagenet: the law for triennial parliaments even receded from those unrepealed provisions of the reign of Edward III., that they should be assembled annually. The court of star-chamber, if it could be said to have a legal jurisdiction at all, which by that name it had not, traced it only to the Tudor period: its recent excesses were diametrically opposed to the existing laws and the protestations of ancient parliaments. The court of ecclesiastical commission was an off-set of the royal supremacy, established at the Reformation. The impositions on merchandise were both plainly illegal, and of no long usage. That of ship-money was flagrantly, and by universal confession, a strain of arbitrary power without pretext of right. Thus, in by far the greater part of the enactments of 1641, the monarchy lost nothing that it had anciently possessed; and the balance of our constitution might seem rather to have been restored to its former equipoise than to have undergone any fresh change.

But those common liberties of England which our forefathers had, with such commendable perseverance, extorted from the grasp of power, though by no means so merely theoretical and negative in effect as some would insinuate, were yet very precarious in the best periods, neither well defined, nor exempt from anomalous exceptions, or from occasional infringements. Some of them, such as the statute for annual sessions of parliament, had gone into disuse. Those that were most evident could not be enforced; and the new tribunals that, whether by law or usurpation, had reared their heads over the people, had made almost all public and personal rights dependent on their arbitrary will. It was necessary, therefore, to infuse new blood into the languid frame, and so to renovate our ancient constitution that the present era should seem almost a new birth of liberty. Such was the aim, especially, of those provisions which placed the return of parliaments at fixed intervals, beyond the power of the crown to elude. It was hoped that by their means, so long as a sense of public spirit should exist in the nation (and beyond that time it is vain to think of liberty), no prince, however able and ambitious, could be free from restraint for more than three years; an interval too short for the completion of

arbitrary projects, and which few ministers would venture to employ in such a manner as might expose them to the wrath of parliament.

It is to be observed, in the second place, that by these salutary restrictions, and some new retrenchments of pernicious or abused prerogative, the long parliament formed our constitution such nearly as it now exists. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution; but none of them, perhaps, were strictly necessary for the preservation of our civil and political privileges; and it is rather from 1641 than any other epoch, that we may date their full legal establishment. That single statute which abolished the star-chamber gave every man a security which no other enactment could have afforded, and which no government could essentially impair. Though the reigns of the two latter Stuarts, accordingly, are justly obnoxious, and were marked by several illegal measures, yet, whether we consider the number and magnitude of their transgressions of law, or the practical oppression of their government, these princes fell very short of the despotism that had been exercised, either under the Tudors or the two first of their own family.

From this survey of the good works of the long parliament we must turn our eyes with equal indifference to the opposite picture of its errors and offences; faults which, though the mischiefs they produced were chiefly temporary, have yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions. In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary; and that, even when posterity may have cause to rejoice in the ultimate result, the existing generation are seldom compensated for their present loss of tranquillity. The very enemies of this parliament confess that they met in November 1640 with almost unmingled zeal for the public good, and with loyal attachment to the crown. But they were misled by the excess of two passions, both just and natural in the circumstances wherein they found themselves, resentment and distrust; passions eminently contagious, and irresistible when they seize on the zeal and credulity of a popular assembly. The one betrayed them into a measure certainly severe and sanguinary, and in the eyes of posterity exposed to greater reproach than it deserved, the attainder of lord Strafford, and some other proceedings of too much violence; the other gave a colour to all their resolutions, and aggravated their differences with the king till there remained no other arbitrator but the sword.

§ 4. Those who know the conduct and character of the earl of

conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws and to govern by a standing army, though as infamous as any treason, could be brought within the words of the statute of Edward III., as a compassing of the king's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported, as well as uttered too much in the heat of passion, to furnish a substantive accusation; and I should rather found my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment. The presumption of history, to whose mirror the scattered rays of moral evidence converge, may be irresistible, when the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this minister appeared so evidently to fall short of high treason, according to the apprehension of that age, as in later times has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of treason by the court, the statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The judges themselves, on a solemn reference by the house of lords for their opinion whether some of the articles charged against Strafford amounted to treason, answered unanimously, that, upon all which their lordships had voted to be proved, it was their opinion the earl of Strafford did deserve to undergo the pains and penalties of high treason by law. And, as an apology, at least, for this judicial opinion, it may be remarked that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the peers voted him guilty), does, in fact, approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying war against the king, even without reference to some Irish acts of parliament upon which the managers of the impeachment relied. It cannot be extravagant to assert that, if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the statutes, be guilty of the

treason called levying war on the king; and that, if we could imagine him to do this by an order from the privy council or the war-office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanor, or felony, according to circumstances; but would want the generality which, as the statute has been construed, determines its character to be treason. It is however manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so frequently done as to bring it within the line of treason; and the evidence is also open to every sort of legal objection. But in that age the rules of evidence, so scrupulously defined since, were either very imperfectly recognised, or continually transgressed. If then Strafford could be brought within the letter of the law, and if he were also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation, although he had not offended against what seemed to be the spirit and intention of the statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly the far more respectable portion of the commons, though only twenty-six peers against nineteen formed the feeble majority on the bill of attainder. It may be observed that the house of commons acted in one respect with a generosity which the crown had never shown in any case of treason, by immediately passing a bill to relieve his children from the penalties of forfeiture and corruption of blood.

Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanors, duly proved on impeachment, must be justly inflicted. "I am still the same," said lord Digby, in his famous speech against the bill of attainder, "in my opinions and affections, as unto the earl of Strafford; I confidently believe him to be the most dangerous minister, the most insupportable to free subjects, that can be charactered. I believe him to be still that grand apostate to the commonwealth, who must not expect to be pardoned in this world till he be despatched to the other. And yet let me tell you, Mr. Speaker, my hand must not be to that despatch." These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known law which neither the court's lust of power nor the clamorous indignation of a popular assembly might turn aside. The king,

whose conscience was so deeply wounded by his acquiescence in this minister's death, would gladly have assented to a bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution. Though nothing perhaps could have restored a tolerable degree of confidence between Charles and the parliament, it is certain that his resentment and aversion were much aggravated by the painful compulsion they had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war.

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of law, as to pass some censure on this deviation from them in the attainder of lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies without paying the forfeit of his offences against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow-citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their pre-eminence, their fall has been more destructive and their punishment more exemplary. Something beyond the retirement or the dismissal of such ministers has seemed necessary to "absolve the gods," and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. If, then, we blame in some measure the sentence against Strafford, it is not for his sake, but for that of the laws on which he trampled, and of the liberty which he betrayed. He died justly before God and man, though we may deem the precedent dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the bill of attainder we cannot look upon it as a crime.

§ 5. The same distrustful temper, blameable in nothing but its excess, drew the house of commons into a measure more unconstitutional than the attainder of Strafford, the bill enacting that they should not be dissolved without their own consent. Whether or not this had been previously meditated by the leaders is uncertain; but the circumstances under which it was adopted display all the blind precipitancy of fear. A scheme for bringing up the army from the north of England to overawe parliament had been

discoursed of, or rather in a great measure concerted, by some young courtiers and military men. The imperfection and indefiniteness of the evidence obtained respecting this plot increased, as often happens, the apprehensions of the commons. Yet, difficult as it might be to fix its proper character between a loose project and a deliberate conspiracy, this at least was hardly to be denied, that the king had listened to and approved a proposal of appealing from the representatives of his people to a military force. Their greatest danger was a sudden dissolution. The triennial bill afforded, indeed, a valuable security for the future. Yet, if the present parliament had been broken with any circumstances of violence, it might justly seem very hazardous to confide in the right of spontaneous election reserved to the people by that statute, which the crown would have three years to defeat. A rapid impulse, rather than any concerted resolution, appears to have dictated this hardy encroachment on the prerogative. The bill against the dissolution of the present parliament without its own consent was resolved in a committee on the fifth of May, brought in the next day, and sent to the lords on the seventh. The upper house, in a conference the same day, urged a very wise and constitutional amendment, limiting its duration to the term of two years. But the commons adhering to their original provisions, the bill was passed by both houses on the eighth. Thus, in the space of three days from the first suggestion, an alteration was made in the frame of our polity which rendered the house of commons equally independent of the sovereign and their constituents; and, if it could be supposed capable of being maintained in more tranquil times, would, in the theory at least of speculative politics, have gradually converted the government into something like a Dutch aristocracy.

§ 6. The parliament had met with as ardent and just an indignation against ecclesiastical as temporal grievances. The tyranny, the folly, and rashness of Charles's-bishops were still greater than his own. It was evidently an indispensable duty to reduce the overbearing ascendancy of that order which had rendered the nation, in regard to spiritual dominion, a great loser by the Reformation. They had been so blindly infatuated as, even in the year 1640, amidst all the perils of the times, to fill up the measure of public wrath by enacting a series of canons in convocation. These enjoined, or at least recommended, some of the modern innovations, which, though many excellent men had been persecuted for want of compliance with them, had not got the sanction of authority. They imposed an oath on the clergy, commonly called the "et cætera oath," binding them to attempt no alteration "in the government of the church by bishops, deans, archdeacons, &c." This oath was by the same authority enjoined to such of the

laity as held ecclesiastical offices. The king, however, on the petition of the council of peers at York, directed it not to be taken. The house of commons rescinded these canons, with some degree of excess on the other side; not only denying the right of convocation to bind the clergy, which had certainly been exercised in all periods, but actually impeaching the bishops for a high misdemeanor on that account. The lords, in the month of March, appointed a committee of ten earls, ten bishops, and ten barons, to report upon the innovations lately brought into the church. Of this committee Williams was chairman. But the spirit which now possessed the commons was not to be exercised by the sacrifice of Laud and Wren, or even by such inconsiderable alterations as the moderate bishops were ready to suggest.

There had always existed a party, though by no means co-extensive with that bearing the general name of puritan, who retained an insuperable aversion to the whole scheme of episcopal discipline, as inconsistent with the ecclesiastical parity they believed to be enjoined by the apostles. It is not easy to determine what proportion these bore to the community. They were certainly at the opening of the parliament by far the less numerous, though an active and increasing party. Few of the house of commons, according to Clarendon and the best contemporary writers, looked to a destruction of the existing hierarchy. The more plausible scheme was one which had the sanction of Usher's learned judgment, and which Williams was said to favour, for what was called a moderate episcopacy; wherein the bishop, reduced to a sort of president of his college of presbyters, and differing from them only in rank, not in order (*gradu*, non *ordine*), should act, whether in ordination or jurisdiction, by their concurrence. This intermediate form of church-government would probably have contented the popular leaders of the commons, except two or three, and have proved acceptable to the nation. But it was hardly less offensive to the Scottish presbyterians, intolerant of the smallest deviation from their own model, than to the high-church episcopalians; and the necessity of humouring that proud and prejudiced race of people, who began already to show that an alteration in the church of England would be their stipulated condition for any assistance they might afford to the popular party, led the majority of the house of commons to give more countenance than they sincerely intended to a bill preferred by what was then called the root-and-branch party, for the entire abolition of episcopacy. This party, composed chiefly of presbyterians, but with no small admixture of other sectaries, predominated in the city of London. At the instigation of the Scots commissioners, a petition against episcopal government, with 15,000 signatures, was presented early in the session (Dec. 11,

order; like many of their other acts, was a manifest encroachment on the executive power of the crown.

§ 7. It seems to have been about the time of the summer recess, during the king's absence in Scotland, that the apprehension of changes in church and state, far beyond what had been dreamed of at the opening of parliament, led to a final schism in the constitutional party. Charles, by abandoning his former advisers, and yielding, with just as much reluctance as displayed the value of the concession, to a series of laws that abridged his prerogative, had recovered a good deal of the affection and confidence of some, and gained from others that sympathy which is seldom withheld from undeserving princes in their humiliation. Though the ill-timed death of the earl of Bedford in May had partly disappointed an intended arrangement for bringing the popular leaders into office, yet the appointments of Essex, Holland, Say, and St. John from that party, were apparently pledges of the king's willingness to select his advisers from their ranks; whatever cause there might be to suspect that their real influence over him would be too inconsiderable. Those who were still excluded, and who distrusted the king's intentions as well towards themselves as the public cause, of whom Pym and Hampden, with the assistance of St. John, though actually solicitor-general, were the chief, found no better means of keeping alive the animosity that was beginning to subside, than by framing the Remonstrance on the state of the kingdom, presented to the king in November, 1641. This being a recapitulation of all the grievances and misgovernment that had existed since his accession, which his acquiescence in so many measures of redress ought, according to the common courtesy due to sovereigns, to have cancelled, was hardly capable of answering any other purpose than that of reanimating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope, from Charles's proud and hasty temper, that he would reply in such a tone as would more exasperate the commons. But he had begun to use the advice of judicious men, Falkland, Hyde, and Colepepper, and reined in his natural violence so as to give his enemies no advantage over him.

The jealousy which nations ought never to lay aside was especially required towards Charles, whose love of arbitrary dominion was much better proved than his sincerity in relinquishing it. But if he were intended to reign at all, and to reign with any portion either of the prerogatives of an English king, or the respect claimed by every sovereign, the Remonstrance of the commons could but prolong an irritation incompatible with public tranquillity. It admits, indeed, of no question, that the schemes of Pym, Hampden,

and St. John, already tended to restrain the king's personal exercise of any effective power, from a sincere persuasion that no confidence could ever be placed in him, though not to abolish the monarchy, or probably to abridge in the same degree the rights of his successor. Their Remonstrance was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the further progress of their endeavours, but, as they would allege, might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty. It was carried in a full house by the small majority of 159 to 148. So much was it deemed a trial of strength, that Cromwell declared after the division that, had the question been lost, he would have sold his estate, and retired to America.

§ 8. It may be thought rather surprising that, with a house of commons so nearly balanced as they appear on this vote, the king should have new demands that annihilated his authority made upon him, and have found a greater majority than had voted the Remonstrance ready to oppose him by arms; especially as that paper contained little but what was true, and might rather be censured as an ill-timed provocation than an encroachment on the constitutional prerogative. But there were circumstances, both of infelicity and misconduct, which aggravated that distrust whereon every measure hostile to him was grounded. His imprudent connivance at popery, and the far more reprehensible encouragement given to it by his court, had sunk deep in the hearts of his people. His ill-wishers knew how to irritate the characteristic sensibility of the English on this topic. The queen, unpopular on the score of her imputed arbitrary counsels, was odious as a maintainer of idolatry. The lenity shown to convicted popish priests, who, though liable to capital punishment, had been suffered to escape with sometimes a very short imprisonment, was naturally (according to the maxims of those times) treated as a grievance by the commons, who petitioned for the execution of one Goodman and others in similar circumstances, perhaps in the hope that the king would attempt to shelter them. But he dexterously left it to the house whether they should die or not; and none of them actually suffered. Rumours of pretended conspiracies by the catholics were perpetually in circulation, and rather unworthily encouraged by the chiefs of the commons. More substantial motives for alarm appeared to arise from the obscure transaction in Scotland, commonly called the Incident, which looked so like a concerted design against the two great leaders of the constitutional party, Hamilton and Argyle, that it was not unnatural to anticipate something similar in England. In the midst of these apprehensions, as if to justify every suspicion and every severity, burst out the Irish rebellion

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What was the extent of the king's lawful prerogative for two centuries or more after the Conquest as to compelling any of his subjects to serve him in foreign war, independently of the obligations of tenure, is a question scarcely to be answered. But Edward III., on the petition of his first parliament, who judged that compulsory service either was or ought to be rendered illegal, passed a remarkable act, with the simple brevity of those times: "That no man from henceforth should be charged to arm himself, otherwise than he was wont in the time of his progenitors, the kings of England; and that no man be compelled to go out of his shire, but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defence of the realm."

This statute, by no means of inconsiderable importance in our constitutional history, put a stop for some ages to these arbitrary conscriptions. But Edward had recourse to another means of levying men without his own cost, by calling on the counties and principal towns to furnish a certain number of troops. Against this the parliament provided a remedy by an act in the 25th year of his reign: "That no man shall be constrained to find men at arms, hoblers, nor archers, other than those who hold by such service, it be not by common consent and grant in parliament."

The successful resistance thus made by parliament appears to have produced the discontinuance of compulsory levies for foreign warfare. Edward III. and his successors, in their long contention with France, resorted to the mode of recruiting by contracts with men of high rank or military estimation, whose influence was greater probably than that of the crown towards procuring voluntary enlistments. The pay of soldiers, which we find stipulated in such of those contracts as are extant, was extremely high; but it secured the service of a brave and vigorous yeomanry.

It is scarcely perhaps necessary to observe that there had never been any regular army kept up in England. Henry VII. established the yeomen of the guard in 1485, solely for the defence of his person, and rather perhaps, even at that time, to be considered as the king's domestic servants than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defence; the Tower of London, Portsmouth, the castle of Dover, the fort of Tilbury, and, before the union of the crowns, Berwick and some other places on the Scottish border. But their whole number must have been insignificant, and probably at no time equal to resist any serious attack.

We must take care not to confound this strictly military force, serving, whether by virtue of tenure or engagement, wheresoever it should be called, with that of a more domestic and defensive character to which alone the name of militia was usually applied. By the Anglo-Saxon laws, or rather by one of the primary and indispensable conditions of political society, every freeholder, if not every freeman, was bound to defend his country against hostile invasion. It appears that the alderman or earl, while those titles continued to imply the government of a county, was the proper commander of this militia. Henry II., in order to render it more effective in cases of emergency, and perhaps with a view to extend its service, enacted, by consent of parliament, that every freeman, according to the value of his estate or moveables, should hold himself constantly furnished with suitable arms and equipments. By the statute of Winchester, in the 13th year of Edward I., these provisions were enforced and extended. Every man, between the ages of fifteen and sixty, was to be assessed, and sworn to keep armour according to the value of his lands and goods; for fifteen pounds and upwards in rent, or forty marks in goods, a hauberk, an iron breastplate, a sword, a knife, and a horse; for smaller property, less extensive arms. A view of this armour was to be taken twice in the year by constables chosen in every hundred. The sheriff, as chief conservator of public peace and minister of the law, had always possessed the right of summoning the *posse comitatûs*; that is, of calling on all the king's liege subjects within his jurisdiction for assistance, in case of any rebellion or tumultuous rising, or when bands of robbers infested the public ways, or when, as occurred very frequently, the execution of legal process was forcibly obstructed. The provisions, however, of the statute of Winchester, so far as they obliged every proprietor to possess suitable arms, were of course applicable to national defence. In seasons of public danger, threatening invasion from the side of Scotland or France, it became customary to issue commissions of array, empowering those to whom they were addressed to muster and train all men capable of bearing arms in the counties to which their commission extended, and hold them in readiness to defend the kingdom. The earliest of these commissions that I find in Rymer is of 1324, and the latest of 1557.

The obligation of keeping sufficient arms according to each man's estate was preserved by a statute of Philip and Mary, which made some changes in the rate and proportion as well as the kind of arms. But these ancient provisions were abrogated by James in his first parliament. The nation, become for ever secure from invasion on the quarter where the militia service had been most required, and freed from the other dangers which had menaced the throne of

approved rewarded with exile or imprisonment, and had incurred the deep reproach of his own heart by the sacrifice of Strafford. He had just now given a reluctant assent to the extinction of one estate of parliament, by the bill excluding bishops from the house of peers. Even in this business of the militia he would have consented to nominate the persons recommended to him as lieutenants, by commissions revocable at his pleasure; or would have passed the bill rendering them irremovable for one year, provided they might receive their orders from himself and the two houses jointly. It was not unreasonable for the king to pause at the critical moment which was to make all future denial nugatory, and inquire whether the prevailing majority designed to leave him what they had not taken away. But he was not long kept in uncertainty upon this score.

§ 12. The nineteen propositions tendered to him at York in the beginning of June, went to abrogate in spirit the whole existing constitution, and were in truth so far beyond what the king could be expected to grant, that terms more intolerable were scarcely proposed to him in his greatest difficulties, not at Uxbridge, nor at Newcastle, nor even at Newport. These famous propositions import that the privy council and officers of state should be approved by parliament, and take such an oath as the two houses should prescribe; that during the intervals of parliament no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers be taken away; the church government and liturgy be reformed as both houses should advise; the militia and all fortified places put in such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers to be made in future from sitting in parliament, unless they be admitted with the consent of both houses. A few more laudable provisions, such as that the judges should hold their offices during good behaviour, which the king had long since promised, were mixed up with these strange demands. Even had the king complied with such unconstitutional requisitions, there was one behind which, though they had not advanced it on this occasion, was not likely to be forgotten. It had been asserted by the house of commons in their last remonstrance, that, on the right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer.

§ 13. In weighing the merits of this great contest, in judging whether a thoroughly upright and enlightened man would rather have listed under the royal or parliamentary standard, there are two political postulates, the concession of which we may require: one, that civil

war is such a calamity as nothing but the most indispensable necessity can authorise any party to bring on; the other, that the mixed government of England by king, lords, and commons, was to be maintained in preference to any other form of polity. The first of these can hardly be disputed; and though the denial of the second would certainly involve no absurdity, yet it may justly be assumed where both parties avowed their adherence to it as a common principle. Such as prefer a despotic or a republican form of government will generally, without much further inquiry, have made their election between Charles I. and the parliament. We do not argue from the creed of the English constitution to those who have abandoned its communion.

There was so much in the conduct and circumstances of both parties in the year 1642 to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. On the one hand he would entertain little doubt of the king's desire to overthrow by force or stratagem whatever had been effected in parliament, and to establish a plenary despotism; his arbitrary temper, his known principles of government, the natural sense of wounded pride and honour, the instigations of a haughty woman, the solicitations of favourites, the promises of ambitious men, were all at work to render his new position as a constitutional sovereign, even if unaccompanied by fresh indignities and encroachments, too grievous and mortifying to be endured. He had already tampered in a conspiracy to overawe, if not to disperse, the parliament: he had probably obtained large promises, though very little to be trusted, from several of the presbyterian leaders in Scotland during his residence there in the summer of 1641: he had attempted to recover his ascendancy by a sudden blow in the affair of the five members; he had sent the queen out of England, furnished with the crown jewels, for no other probable end than to raise men and procure arms in foreign countries: he was now about to take the field with an army, composed in part of young gentlemen disdainful of a puritan faction that censured their licence, and of those soldiers of fortune, reckless of public principle, and averse to civil control, whom the war in Germany had trained; in part of the catholics, a wealthy and active body, devoted to the crown, from which alone they had experienced justice or humanity, and from whose favour and gratitude they now expected the most splendid returns.

But, on the other hand, the house of commons presented still less favourable prospects. After every allowance has been made, he must bring very heated passions to the records of those times who does not perceive in the conduct of that body a series of glaring violations, not only of positive and constitutional, but of

those higher principles which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both houses in August, 1641, and that in November authorising the earl of Leicester to raise men for the defence of Ireland without warrant under the great seal, both manifest encroachments on the executive power; and the enormous extension of privilege, under which every person accused on the slightest testimony of disparaging their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognizance, was dragged before them as a delinquent, and lodged in their prison. Witness the outrageous attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterwards of sir Ralph Hopton to the Tower, for such language used in debate as would not have excited any observation in ordinary times;—their continual encroachments on the rights and privileges of the lords, as in their intimation that if bills thought by them necessary for the public good should fall in the upper house, they must join with the minority of the lords in representing the same to the king; or in the impeachment of the duke of Richmond for words, and those of the most trifling nature, spoken in the upper house;—their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established constitution; while they encouraged those of a tumultuous multitude at their bar in favour of innovation;—their usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property. Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the house of lords during their compelled absence through fear of the populace; a protest not perhaps entirely well expressed, but abundantly justifiable in its argument by the plainest principles of law. These great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe perhaps, but far more sweeping, than that which had rendered the star-chamber odious.

Thus, with evil auspices, with much peril of despotism on the one hand, with more of anarchy on the other, amidst the apprehensions and sorrows of good men, the civil war commenced

in the summer of 1642. I might now perhaps pass over the period that intervened, until the restoration of Charles II., as not strictly belonging to a work which undertakes to relate the progress of the English constitution. But this would have left a sort of chasm that might disappoint the reader; and as I have already not wholly excluded our more general political history, without a knowledge of which the laws and government of any people must be unintelligible, it will probably not be deemed an unnecessary digression, if I devote one chapter to the most interesting and remarkable portion of British story.

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO
THE RESTORATION.

— P A R T I .

§ 1. Success of the King in the first part of the War. § 2. Efforts by the Moderate Party for Peace. Affair at Brentford. § 3. Treaty of Oxford. § 4. Impeachment of the Queen. § 5. Waller's Plot. § 6. Seccession of some Peers to the King's Quarters. Their Treatment there impolitic. § 7. The Anti-pacifist Party gain the ascendant at Westminster. § 8. The Parliament makes a new Great Seal. § 9. And takes the Covenant. § 10. Persecution of the Clergy who refuse it. § 11. Impeachment and Execution of Laud. § 12. Decline of the King's Affairs in 1644. § 13. Factions at Oxford. § 14. Royalist Lords and Commons summoned to that City. Treaty of Uxbridge. Impossibility of Agreement. § 15. Miseries of the War. § 16. Essex and Manchester suspected of Lukewarmness. § 17. Self-denying Ordinance. § 18. Battle of Naseby. Desperate condition of the King's Affairs. He throws himself into the hands of the Scots. § 19. His Struggles to preserve Episcopacy, against the advice of the Queen and others. Bad Conduct of the Queen. § 20. Publication of Letters taken at Naseby. § 21. Discovery of Glamorgan's Treaty. § 22. King delivered up by the Scots. § 23. Growth of the Independents and Republicans. Opposition to the Presbyterian Government. Toleration. § 24. Intrigues of the Army with the King. His Person seized. § 25. The Parliament yield to the Army. § 26. Mysterious Conduct of Cromwell. § 27. Imprudent Hopes of the King. He rejects the Proposals of the Army. § 28. His Flight from Hampton Court. Alarming Votes against him. § 29. Scots' Invasion. The Presbyterians regain the Ascendant. § 30. Treaty of Newport. § 31. Gradual Progress of a Republican Party. § 32. Scheme among the Officers of bringing Charles to Trial. This is finally determined. Seclusion of Presbyterian Members. § 33. Motives of some of the King's Judges. § 34. Question of his Execution Discussed. § 35. His Character. § 36. Icon Basilikè.

§ 1. FACTIONS that, while still under some restraint from the forms at least of constitutional law, excite our disgust by their selfishness or intemperance, are little likely to redeem their honour when their animosities have kindled civil warfare. If it were difficult for an upright man to enlist with an entire willingness under either the royalist or the parliamentary banner at the commencement of hostilities in 1642, it became far less easy for him to desire the complete success of one or the other cause, as advancing time displayed the faults of both in darker colours than they had previously worn. Of the parliament—to begin with the more powerful and victorious party—it may be said, I think, with not greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are

recorded of them from their quarrel with the king to their expulsion by Cromwell.

Notwithstanding the secession from parliament before the commencement of the war of nearly all the peers who could be reckoned on the king's side, and of a pretty considerable part of the commons, there still continued to sit at Westminster many sensible and moderate persons, who thought that they could not serve their country better than by remaining at their posts, and laboured continually to bring about a pacification by mutual concessions. Such were the earls of Northumberland, Holland, Lincoln, and Bedford, among the peers; Selden, Whitelock, Hollis, Waller, Pierpoint, and Rudyard, in the commons. These, however, would have formed but a very ineffectual minority if the war itself, for at least twelve months, had not taken a turn little expected by the parliament. The hard usage Charles seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy, accustomed to respect the established laws, and to love monarchy, as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society. Their zeal placed the king at the head of a far more considerable army than either party had anticipated. In the first battle, that of Edgehill, though he did not remain master of the field, yet all the military consequences were evidently in his favour. In the ensuing campaign of 1643, the advantage was for several months entirely his own, nor could he be said to be a loser on the whole result, notwithstanding some reverses that accompanied the autumn. A line drawn from Hull to Southampton would suggest no very incorrect idea of the two parties, considered as to their military occupation of the kingdom, at the beginning of September, 1643; for if the parliament, by the possession of Gloucester and Plymouth, and by some force they had on foot in Cheshire and other midland parts, kept their ground on the west of this line, this was nearly compensated by the earl of Newcastle's possession at that time of most of Lincolnshire, which lay within it. Such was the temporary effect, partly indeed of what may be called the fortune of war, but rather of the zeal and spirit of the royalists, and of their advantage in a more numerous and intrepid cavalry.

§ 2 It was natural that the moderate party in parliament should acquire strength by the untoward fortune of its arms. Their aim, as well as that of the constitutional royalists, was a speedy pacification. On the king's advance to Colnbrook, in November, 1642, the two houses made an overture for negotiation, on which he

expressed his readiness to enter. But, during the parley, some of his troops advanced to Brentford, and a sharp action took place in that town. The parliament affected to consider this such a mark of perfidy and bloodthirstiness as justified them in breaking off the treaty, a step to which they were doubtless more inclined by the king's retreat, and their discovery that his army was less formidable than they had apprehended. It is very probable, or rather certain, even from Clarendon's account, that many about the king, if not himself, were sufficiently indisposed to negotiate; yet, as no cessation of arms had been agreed upon, or even proposed, he cannot be said to have waived the unquestionable right of every belligerent to obtain all possible advantage by arms, in order to treat for peace in a more favourable position. But, as mankind are seldom reasonable in admitting such maxims against themselves, he seems to have injured his reputation by this affair of Brentford.

§ 3. A treaty, from which many ventured to hope much, was begun early in the next spring at Oxford, after a struggle which had lasted through the winter within the walls of parliament. But though the party of Pym and Hampden at Westminster were not able to prevent negotiation against the strong bent of the house of lords, and even of the city, which had been taught to lower its tone by the interruption of trade, and especially of the supply of coals from Newcastle, yet they were powerful enough to make the houses insist on terms not less unreasonable than those contained in their nineteen propositions the year before. The king could not be justly expected to comply with these; but, had they been more moderate, or if the parliament would have in some measure receded from them, we have every reason to conclude, both by the nature of the terms he proposed in return, and by the positive testimony of Clarendon, that he would not have come sincerely into any scheme of immediate accommodation. The reason assigned by that author for the unwillingness of Charles to agree on a cessation of arms during the negotiation, though it had been originally suggested by himself (and which reason would have been still more applicable to a treaty of peace), is one so strange that it requires all the authority of one very unwilling to confess any weakness or duplicity of the king to be believed. He had made a solemn promise to the queen on her departure for Holland the year before, "that he would receive no person who had disserved him into any favour or trust, without her privy and consent; and that, as she had undergone many reproaches and calumnies at the entrance into the war, so he would never make any peace but by her interposition and mediation, that the kingdom might receive that blessing only from her." Let this be called, as the reader may please, the extravagance of romantic

affection, or rather the height of pusillanimous and criminal subserviency, we cannot surely help acknowledging that this one marked weakness in Charles's character, had there been nothing else to object, rendered the return of cordial harmony between himself and his people scarce within the bounds of natural possibility.

§ 4. Though this particular instance of the queen's prodigious ascendancy over her husband remained secret till the publication of lord Clarendon's Life, it was in general well known, and put the leaders of the commons on a remarkable stroke of policy, in order to prevent the renewal of negotiations. On her landing in the north, with a supply of money and arms, as well as with a few troops she had collected in Holland, they carried up to the lords an impeachment for high treason against her. This measure (so obnoxious was Henrietta) met with a less vigorous opposition than might be expected, though the moderate party was still in considerable force. It was not only an insolence which a king, less uxorious than Charles, could never pardon, but a violation of the primary laws and moral sentiments that preserve human society, to which the queen was acting in obedience. Scarce any proceeding of the long parliament seems more odious than this; whether designed by way of intimidation, or to exasperate the king, and render the composure of existing differences more impracticable.

§ 5. The enemies of peace were strengthened by the discovery of what is usually called Waller's plot, a scheme for making a strong demonstration of the royalist party in London, wherein several members of both houses appear to have been more or less concerned. Upon the detection of this conspiracy, the two houses of parliament took an oath not to lay down arms, so long as the papists now in arms should be protected from the justice of parliament; and never to adhere to, or willingly assist, the forces raised by the king, without the consent of both houses. Every individual member of the peers and commons took this oath; some of them being then in secret concert with the king, and others entertaining intentions, as their conduct very soon evinced, of deserting to his side. Such was the commencement of a system of perjury, which lasted for many years, and belies the pretended religion of that hypocritical age.

§ 6. The king was now in a course of success, which made him rather hearken to the sanguine courtiers of Oxford, where, according to the invariable character of an exiled faction, every advantage or reverse brought on a disproportionate exultation or despondency, than to those better counsellors who knew the precariousness of his good fortune. He published a declaration, wherein he denied the two houses at Westminster the name of a

parliament; which he could no more take from them, after the bill he had passed, than they could deprive him of his royal title, and by refusing which he shut up all avenues to an equal peace. This was soon followed by so extraordinary a political error as manifests the king's want of judgment, and the utter improbability that any event of the war could have restored to England the blessings of liberty and repose. Three peers of the moderate party, the earls of Holland, Bedford, and Clare, dissatisfied with the preponderance of a violent faction in the commons, left their places at Westminster, and came into the king's quarters. It might be presumed, from general policy as well as from his constant declarations of a desire to restore peace, that they would have been received with such studied courtesy as might serve to reconcile to their own mind a step which, when taken with the best intentions, is always equivocal and humiliating. There was great reason to believe that the earl of Northumberland, not only the first peer then in England as to family and fortune, but a man highly esteemed for prudence, was only waiting to observe the reception of those who went first to Oxford before he followed their steps. There were even well-founded hopes of the earl of Essex, who, though incapable of betraying his trust as commander of the parliament's army, was, both from personal and public motives; disinclined to the war-party in the commons. There was much to expect from all those who had secretly wished well to the king's cause, and from those whom it is madness to reject or insult, the followers of fortune, the worshippers of power, without whom neither fortune nor power can long subsist. Yet such was the state of Charles's council-board at Oxford that some were for arresting these proselyte earls; and it was carried with difficulty, after they had been detained some time at Wallingford, that they might come to the court. But they met there with so many and such general slights, that, though they fought in the king's army at Newbury, they found their position intolerably ignominious, and, after about three months, returned to the parliament with many expressions of repentance, and strong testimonies to the evil counsels of Oxford.

§ 7. Both parties showed an adverseness to all overtures for peace. On the news that prince Rupert had taken Bristol, the last and most serious loss that the parliament sustained, the lords agreed on propositions for peace to be sent to the king, of an unusually moderate tone. The commons, on a division of 94 to 65, determined to take them into consideration; but the lord mayor Pennington having procured an address of the city against peace, backed by a tumultuous mob, a small majority was obtained against concurring with the other house. It was after this that the lords above mentioned, as well as many of the commons, quitted Westminster. The pro-

vailing party had no thoughts of peace till they could dictate its conditions. Through Essex's great success in raising the siege of Gloucester, the most distinguished exploit in his military life, and the battle of Newbury, wherein the advantage was certainly theirs, they became secure against any important attack on the king's side, the war turning again to endless sieges and skirmishes of partisans. And they now adopted two important measures, one of which gave a new complexion to the quarrel.

§ 8. Littleton, the lord-keeper of the great seal, had carried it away with him to the king. This of itself put a stop to the regular course of the executive government, and to the administration of justice within the parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the great seal. It must surely excite a smile, that men who had raised armies, and fought battles against the king, should be perplexed how to get over so technical a difficulty. But the great seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of royal authority in a higher degree than the person of the king. The commons prepared an ordinance in July for making a new great seal, in which the lords could not be induced to concur till October. The royalists, and the king himself, exclaimed against this as the most audacious treason, though it may be reckoned a very natural consequence of the state in which the parliament was placed.

§ 9. The second measure of parliament was of greater moment and more fatal consequences. I have already mentioned the stress laid by the bigoted Scots presbyterians on the establishment of their own church-government in England. Chiefly perhaps to conciliate this people, the house of commons had entertained the bill for abolishing episcopacy; and this had formed a part of the nineteen propositions that both houses tendered to the king. After the action at Brentford they concurred in a declaration to be delivered to the Scots commissioners, resident in London, wherein, after setting forth the malice of the prelatical clergy in hindering the reformation of ecclesiastical government, and professing their own desire willingly and affectionately to pursue a closer union in such matters between the two nations, they request their brethren of Scotland to raise such forces as they should judge sufficient for the securing the peace of their own borders against ill-affected persons there; as likewise to assist them in suppressing the army of papists and foreigners which, it was expected, would shortly be on foot in England.

This overture produced for many months no sensible effect. The Scots, with all their national wariness, suspected that, in spite of

these general declarations in favour of their church polity, it was not much at heart with most of the parliament, and might be given up in a treaty, if the king would concede some other matters in dispute. Accordingly, when the progress of his arms, especially in the north, during the ensuing summer, compelled the parliament to call in a more pressing manner, and by a special embassy, for their aid, they resolved to bind them down by such a compact as no wavering policy should ever rescind. They insisted therefore on the adoption of the solemn league and covenant, founded on a similar association of their own five years before, through which they had successfully resisted the king and overthrown the prelatie government. The covenant consisted in an oath to be subscribed by all sorts of persons in both kingdoms, whereby they bound themselves to preserve the reformed religion in the church of Scotland, in doctrine, worship, discipline, and government, according to the word of God and practice of the best reformed churches; and to endeavour to bring the churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church-government, directory for worship, and catechizing; to endeavour, without respect of persons, the extirpation of popery, prelacy (that is, church-government by archbishops, bishops, their chancellors, and commissaries, deans and chapters, archdeacons, and all other ecclesiastical officers depending on that hierarchy), and whatsoever should be found contrary to sound doctrine and the power of godliness; to preserve the rights and privileges of the parliaments and the liberties of the kingdoms, and the king's person and authority, in the preservation and defence of the true religion and liberties of the kingdoms; to endeavour the discovery of incendiaries and malignants, who hinder the reformation of religion, and divide the king from his people, that they may be brought to punishment; finally, to assist and defend all such as should enter into this covenant and not suffer themselves to be withdrawn from it, whether to revolt to the opposite party, or to give into a detestable indifference or neutrality. In conformity to the strict alliance thus established between the two kingdoms, the Scots commissioners at Westminster were intrusted, jointly with a committee of both houses, with very extensive powers to administer the public affairs.

Every member of the commons who remained at Westminster, to the number of 228, or perhaps more, and from 20 to 30 peers that formed their upper house, subscribed this deliberate pledge to overturn the established church; many of them with extreme reluctance, both from a dislike of the innovation, and from a consciousness that it raised a most formidable obstacle to the restoration of peace; but with a secret reserve, for which some want of precision in the

language of this covenant (purposely introduced by Vane, as is said, to shelter his own schemes) afforded them a sort of apology. It was next imposed on all civil and military officers, and upon all the beneficed clergy.

§ 10. A severe persecution fell on the faithful children of the Anglican church. Many had already been sequestered from their livings, or even subjected to imprisonment, by the parliamentary committee for scandalous ministers, or by subordinate committees of the same kind set up in each county within their quarters; sometimes on the score of immoralities or false doctrine, more frequently for what they termed malignity, or attachment to the king and his party. Yet wary men, who meddled not with politics, might hope to elude this inquisition. But the covenant, imposed as a general test, drove out all who were too conscientious to pledge themselves by a solemn appeal to the Deity to resist the polity which they generally believed to be of his institution. What number of the clergy were ejected (most of them but for refusing the covenant, and for no moral offence or imputed superstition) it is impossible to ascertain. Walker, in his *Sufferings of the Clergy*, a folio volume published in the latter end of Anne's reign, with all the virulence and partiality of the high-church faction in that age, endeavoured to support those who had reckoned it at 8000; a palpable overstatement upon his own showing, for he cannot produce near 2000 names after a most diligent investigation. Neal, however, admits 1600, probably more than one-fifth of the beneficed ministers in the kingdom. The biographical collections furnish a pretty copious martyrology of men the most distinguished by their learning and virtues in that age. The remorseless and indiscriminate bigotry of presbyterianism might boast that it had heaped disgrace on Walton, and driven Lydiat to beggary; that it trampled on the old age of Hales, and embittered with insult the dying moments of Chillingworth.

§ 11. But the most unjustifiable act of these zealots, and one of the greatest reproaches of the long parliament, was the death of archbishop Laud. In the first days of the session, while the fall of Strafford struck every one with astonishment, the commons had carried up an impeachment against him for high treason, in fourteen articles of charge; and he had lain ever since in the Tower, his revenues and even private estate sequestered, and in great indignance. After nearly three years' neglect, specific articles were exhibited against him in October, 1643, but not proceeded on with vigour till December, 1644; when, for whatever reason, a determination was taken to pursue this unfortunate prelate to death. The charges against him, which Wild, Maynard, and other managers of the impeachment were to aggravate into treason, related partly

to those papistical innovations which had nothing of a political character about them, partly to the violent proceedings in the star-chamber and high-commission courts, wherein Laud was very prominent as a councillor, but certainly without any greater legal responsibility than fell on many others. He defended himself, not always prudently or satisfactorily, but with courage and ability; never receding from his magnificent notions of spiritual power, but endeavouring to shift the blame of the sentences pronounced by the council on those who concurred with him. The imputation of popery he repelled by a list of the converts he had made; but the word was equivocal, and he could not deny the difference between his protestantism and that of our Reformation. Nothing could be more monstrous than the allegation of treason in this case. The judges, on a reference by the lords, gave it to be understood, in their timid way, that the charges contained no legal treason. But, the commons having changed their impeachment into an ordinance for his execution, the peers were pusillanimous enough to comply. Laud had amply merited punishment for his tyrannical abuse of power; but his execution at the age of seventy, without the slightest pretence of political necessity, was a far more unjustifiable instance of it than any that was alleged against him.

§ 12. Pursuant to the before-mentioned treaty, the Scots army of 21,000 men marched into England in January, 1644. This was a very serious accession to Charles's difficulties, already sufficient to dissipate all hopes of final triumph, except in the most sanguine minds. His successes, in fact, had been rather such as to surprise well-judging men than to make them expect any more favourable termination of the war than by a fair treaty. From the beginning it may be said that the yeomanry and trading classes of towns were generally hostile to the king's side, even in those counties which were in his military occupation; except in a few, such as Cornwall, Worcester, Salop, and most of Wales, where the prevailing sentiment was chiefly royalist; and this disaffection was prodigiously increased through the licence of his ill-paid and ill-disciplined army. On the other hand, the gentry were in a great majority attached to his cause, even in the parts of England which lay subject to the parliament. But he was never able to make any durable impression on what were called the associated counties, extending from Norfolk to Sussex inclusively, within which no rising could be attempted with any effect; while, on the other hand, the parliament possessed several garrisons, and kept up considerable forces, in that larger portion of the kingdom where he might be reckoned superior. Their resources were far greater; and the taxes imposed by them, though exceedingly heavy, were more regularly paid and less ruinous to the people than the sudden exactions, half plunder half

contribution, of the ravenous cavaliers. The king lost ground during the winter. He had built hopes on bringing over troops from Ireland; for the sake of which he made a truce, then called the cessation, with the rebel catholics. But this reinforcement having been beaten and dispersed by Fairfax at Namptwich, he had the mortification of finding that this scheme had much increased his own unpopularity, and the distrust entertained of him even by his adherents, without the smallest advantage. The next campaign was marked by the great defeat of Rupert and Newcastle at Marston Moor, and the loss of the north of England; a blow so terrible as must have brought on his speedy ruin, if it had not been in some degree mitigated by his strange and unexpected success over Essex in the west, and by the tardiness of the Scots in making use of their victory. Upon the result of the campaign of 1644, the king's affairs were in such bad condition that nothing less than a series of victories could have reinstated them; yet not so totally ruined as to hold out much prospect of an approaching termination to the people's calamities.

§ 13. There had been, from the very commencement of the war, all that distraction in the king's councils at Oxford, and all those bickerings and heart-burnings among his adherents, which naturally belong to men embarked in a dangerous cause with different motives and different views. The military men, some of whom had served with the Swedes in Germany, acknowledged no laws but those of war; and could not understand that, either in annoying the enemy or providing for themselves, they were to acknowledge any restraints of the civil power. The lawyers, on the other hand, and the whole constitutional party, laboured to keep up, in the midst of arms, the appearances at least of legal justice and that favourite maxim of Englishmen, the supremacy of civil over military authority, rather more strictly perhaps than the nature of their actual circumstances would admit. At the head of the former party stood the king's two nephews, Rupert and Maurice, the younger sons of the late unfortunate elector palatine, soldiers of fortune (as we may truly call them), of rude and imperious characters, avowedly despising the council and the common law, and supported by Charles, with all his injudiciousness and incapacity for affairs, against the greatest men of the kingdom. Another very powerful and obnoxious faction was that of the catholics, proud of their services and sacrifices, confident in the queen's protection, and looking at least to a full toleration as their just reward. They were the natural enemies of peace, and little less hated at Oxford than at Westminster.

§ 14. At the beginning of the winter of 1643 the king took the remarkable step of summoning the peers and commoners of his party to meet in parliament at Oxford. This was evidently sug-

gested by the constitutionalists with the intention of obtaining a supply by more regular methods than forced contribution, and of opposing a barrier to the military and popish interests. Whether it were equally calculated to further the king's cause may admit of some doubt. The royalist convention indeed, which name it ought rather to have taken than that of parliament, met in considerable strength at Oxford. Forty-three peers, and one hundred and eighteen commoners, subscribed a letter to the earl of Essex, expressing their anxiety for a treaty of peace; twenty-nine of the former, and fifty-seven of the latter, it is said, being then absent on the king's service, or other occasions. Such a display of numbers, nearly double in one house and nearly half in the other, of those who remained at Westminster, might have an effect on the nation's prejudices, and at least redeem the king from the charge of standing singly against his parliament. But they came in no spirit of fervid loyalty, rather distrustful of the king, especially on the score of religion; averse to some whom he had injudiciously raised to power, such as Digby and Cottington; and so eager for pacification as not perhaps to have been unwilling to purchase it by greater concessions than he could prudently make. Peace however was by no means brought nearer by their meeting; the parliament, jealous and alarmed at it, would never recognise their existence, and were so provoked at their voting the lords and commons at Westminster guilty of treason, that, if we believe a writer of some authority, the two houses unanimously passed a vote on Essex's motion, summoning the king to appear by a certain day. But the Scots commissioners had force enough to turn aside such violent suggestions, and ultimately obtained the concurrence of both houses in propositions for a treaty. They had begun to find themselves less likely to sway the counsels of Westminster than they had expected, and dreaded the rising ascendancy of Cromwell.

The treaty was opened at Uxbridge in January, 1645. But neither the king nor his adversaries entered on it with minds sincerely bent on peace: they, on the one hand, resolute not to swerve from the utmost rigour of a conqueror's terms, without having conquered; and he, though more secretly, cherishing illusive hopes of a more triumphant restoration to power than any treaty could be expected to effect. The three leading topics of discussion among the negotiators at Uxbridge were the church, the militia, and the state of Ireland. Bound by their unhappy covenant, and watched by their Scots colleagues, the English commissioners on the parliament side demanded the complete establishment of a presbyterian polity, and the substitution of what was called the directory for the Anglican liturgy. Upon this head there was little prospect of a union. The king had deeply imbibed the tenets of Andrew

and Laud, believing an episcopal government indispensably necessary to the valid administration of the sacraments, and the very existence of a Christian church. The Scots, and a portion of the English clergy, were equally confident that their presbyterian form was established by the apostles as a divine model, from which it was unlawful to depart. The royalists offered, what in an earlier stage of their dissensions would have satisfied almost every man, that limited scheme of episcopal hierarchy, above mentioned as approved by Usher, rendering the bishop among his presbyters much like the king in parliament, not free to exercise his jurisdiction, nor to confer orders without their consent, and offered to leave all ceremonies to the minister's discretion. Such a compromise would probably have pleased the English nation, averse to nothing in their established church except its abuses; but the parliamentary negotiators would not so much as enter into discussion upon it.

They were hardly less unyielding on the subject of the militia. They began with a demand of naming all the commanders by sea and land, including the lord-lieutenant of Ireland, and all governors of garrisons, for an unlimited time. The king, though not very willingly, proposed that the command should be vested in twenty persons, half to be named by himself, half by the parliament, for the term of three years, which he afterwards extended to seven, at the expiration of which time it should revert to the crown. But the utmost concession that could be obtained from the other side was to limit their exclusive possession of this power to seven years, leaving the matter open for an ulterior arrangement by act of parliament at their termination. Even if this treaty had been conducted between two belligerent states, whom rivalry or ambition often excite to press every demand which superior power can extort from weakness, there yet was nothing in the condition of the king's affairs which should compel him thus to pass under the yoke, and enter his capital as a prisoner.

§ 15. It remained only, after the rupture of the treaty at Uxbridge, to try once more the fortune of war. The people, both in the king's and parliament's quarters, but especially the former, heard with dismay that peace could not be attained. Many of the perpetual skirmishes and captures of towns, which made every man's life and fortune precarious, have found no place in general history, but may be traced in the journal of Whitelock, or in the Mercuries and other fugitive sheets, great numbers of which are still extant. And it will appear, I believe, from these, that scarcely one county in England was exempt, at one time or other of the war, from becoming the scene of this unnatural contest. Compared, indeed, with the civil wars in France in the preceding century, there had been fewer acts of enormous cruelty, and less atrocious breaches of public

faith. But much blood had been wantonly shed, and articles of capitulation had been very indifferently kept. The royalist army, especially the cavalry, commanded by men either wholly unprincipled, or at least regardless of the people, and deeming them ill affected, the princes Rupert and Maurice, Goring and Wilmot, lived without restraint, or law, or military discipline, and committed every excess even in friendly quarters. An ostentatious dissoluteness became characteristic of the cavalier, as a formal austerity was of the puritan: one spoiling his neighbour in the name of God, the other of the king. The parliament's troops were not quite free from these military vices, but displayed them in a much less scandalous degree, owing to their more religious habits and the influence of their presbyterian chaplains, to the better example of their commanders, and to the comparative, though not absolute, punctuality of their pay. But this pay was raised through unheard-of assessments, especially an excise on liquors, a new name in England, and through the sequestration of the estates of all the king's adherents: resources of which he also had availed himself, partly by the rights of war, partly by the grant of his Oxford parliament.

§ 16. A war so calamitous seemed likely to endure till it had exhausted the nation. With all the parliament's superiority, they had yet to subdue nearly half the kingdom. The Scots had not advanced southward, content with reducing Newcastle and the rest of the northern counties. These they treated almost as hostile, without distinction of parties, not only exacting contributions, but committing, unless they are much belied, great excesses of indiscipline; their presbyterian gravity not having yet overcome the ancient national propensities. In the midland and western parts the king had just the worse, without having sustained material loss; and another summer might pass away in marches and counter-marches, in skirmishes of cavalry, in tedious sieges of paltry fortifications, some of them mere country houses, which nothing but an amazing deficiency in that branch of military science could have rendered tenable. This protraction of the war had long given rise to no unnatural discontent with its management, and to suspicions, first of Essex, then of Manchester and others in command, as if they were secretly reluctant to complete the triumph of their employers. It is, indeed, not impossible that both these peers, especially the former, out of their desire to see peace restored on terms compatible with some degree of authority in the crown, and with the dignity of their own order, did not always press their advantages against the king as if he had been a public enemy.

§ 17. There could, however, be no doubt that Fairfax and Cromwell were far superior, both by their own talents for war and the discipline they had introduced into their army, to the earlier parlia-

mentary commanders; and that, as a military arrangement, the self-denying ordinance was judiciously conceived. This, which took from all members of both houses their commands in the army, or civil employments, was, as is well known, the first great victory of the independent party which had grown up lately in parliament under Vane and Cromwell. They carried another measure of no less importance, collateral to the former; the new-moulding, as it was called, of the army; reducing it to twenty-one or twenty-two thousand men; discharging such officers and soldiers as were reckoned unfit, and completing their regiments by new levies. The ordinance, after being once rejected by the house, passed their house with some modifications in April. From Fairfax, the new general, they saw little to fear and much to expect; while Cromwell, as a member of the house of commons, was positively excluded by the ordinance itself. But, through a successful intrigue of his friends, this great man, already not less formidable to the presbyterian faction than to the royalists, was permitted to continue lieutenant-general.

§ 18. The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over the king and the monarchy, but over the parliament and the nation.

It does not appear to me that a brave and prudent man, in the condition of Charles I., had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeable tide of fortune. I cannot therefore blame him either for refusing unreasonable terms of accommodation or for not relinquishing altogether the contest. But after his defeat at Naseby his affairs were, in a military sense, so irretrievable that, in prolonging the war with as much obstinacy as the broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents which has been sometimes imputed to him. There was, from the hour of that battle, only one safe and honourable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction—hopes of regaining power through the disunion of his enemies—might have been entertained with better reason, as with greater safety, in a foreign land.

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§ 18. The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over the king and the monarchy, but over the parliament and the nation.

It does not appear to me that a brave and prudent man, in the condition of Charles I., had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeful tide of fortune. I cannot therefore blame him either for refusing unreasonable terms of accommodation or for not relinquishing altogether the contest. But after his defeat at Naseby his affairs were, in a military sense, so irretrievable that, in prolonging the war with as much obstinacy as the broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents which has been sometimes imputed to him. There was, from the hour of that battle, only one safe and honourable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction—hopes of regaining power through the disunion of his enemies—might have been entertained with better reason, as with greater safety, in a foreign land.

Whether any such thoughts of abandoning a hopeless contest were ever entertained by the king during this particular period, it is impossible to pronounce; we should infer the contrary from all his actions. But, whatever might have been the king's disposition, he would not have dared to retire from England. That sinister domestic rule to which he had so long been subject controlled every action. Careless of her husband's happiness, and already attached probably to one whom she afterwards married, Henrietta longed only for his recovery of a power which would become her own. Hence, while she constantly laid her injunctions on Charles never to concede anything as to the militia or the Irish catholics, she became desirous, when no other means presented itself, that he should sacrifice what was still nearer to his heart, the episcopal church-government. The queen-regent of France, whose sincerity in desiring the king's restoration there can be no ground to deny, was equally persuaded that he could hope for it on no less painful conditions. They reasoned of course very plausibly from the great precedent of flexible consciences, the reconciliation of Henrietta's illustrious father to the catholic church. As he could neither have regained his royal power nor restored peace to France without this compliance with his subjects' prejudices, so Charles could still less expect, in circumstances by no means so favourable, that he should avoid a concession, in the eyes of almost all men but himself, of incomparably less importance. It was in expectation, or perhaps rather in the hope, of this sacrifice that the French envoy Montreuil entered on his ill-starred negotiation for the king's taking shelter with the Scots army. And it must be confessed that several of his best friends were hardly less anxious that he should desert a church he could not protect. They doubted not, reasoning from their own characters, that he would ultimately give way. But that Charles, unchangeably resolved on this head, should have put himself in the power of men fully as bigoted as himself (if he really conceived that the Scots presbyterians would shed their blood to re-establish the prelacy they abhorred), was an additional proof of that delusion which made him fancy that no government could be established without his concurrence; unless indeed we should rather consider it as one of those desperate courses into which he who can foresee nothing but evil from every calculable line of action will sometimes plunge at a venture, borrowing some ray of hope from the uncertainty of their consequences.

§ 19. It was an inevitable effect of this step that the king surrendered his personal liberty, which he never afterwards recovered. Considering his situation, we may at first think the parliament tolerably moderate in offering nearly the same terms of peace at Newcastle which he had rejected at Uxbridge; the chief difference

being that the power of the militia, which had been demanded for commissioners nominated and removable by the two houses during an indefinite period, was now proposed to reside in the two houses for the space of twenty years; which rather more unequivocally indicated their design of making the parliament perpetual. But in fact they had so abridged the royal prerogative by their former propositions, that, preserving the decent semblance of monarchy, scarce anything further could be exacted. The king's circumstances were, however, so altered that by persisting in his refusal of these propositions he excited a natural indignation at his obstinacy in men who felt their own right (the conqueror's right) to dictate terms at pleasure. Charles had to contend, during his unhappy residence at Newcastle, not merely with revolted subjects in the pride of conquest, and with bigoted priests, as blindly confident in one set of doubtful propositions as he was in the opposite, but with those he had trusted the most and loved the dearest. We have in the Clarendon State Papers a series of letters from Paris, written, some by the queen, others jointly by Colepepper, Jermyn, and Ashburnham, or the two former, urging him to sacrifice episcopacy, as the necessary means of his reiteration. We have the king's answers, that display in an interesting manner the struggles of his mind under this severe trial. No candid reader, I think, can doubt that a serious sense of obligation was predominant in Charles's persevering fidelity to the English church. He could hardly avoid perceiving that, as Colepepper told him in his rough style, the question was whether he would choose to be a king of presbytery or no king. But the utmost length which he could prevail on himself to go was to offer the continuance of the presbyterian discipline, as established by the parliament, for three years, during which a conference of divines might be had, in order to bring about a settlement.

Pressed thus on a topic so important above all others in his eyes, the king gave a proof of his sincerity by greater concessions of power than he had ever intended. He had some time before openly offered to let the parliament name all the commissioners of the militia for seven years, and all the officers of state and judges to hold their places for life. He now empowered a secret agent in London, Mr. William Murray, privately to sound the parliamentary leaders, if they would consent to the establishment of a moderated episcopacy after three or five years, on condition of his departing from the right of the militia during his whole life. This dereliction of the main ground of contest brought down the queen's indignation on his head. She wrote several letters, in an imperious and unfeeling tone, declaring that she would never set her foot in England as long as the parliament should exist. Jermyn and

ample a commission as might remove the distrust that the Irish were likely to entertain of a negotiation wherein Ormond should be concerned; while, by a certain latitude in the style of the instrument, and by his own letters to the lord lieutenant about Glamorgan's errand, he left it open to assert, in case of necessity, that it was never intended to exclude the former's privity and sanction. Charles had unhappily long been in the habit of perverting his natural acuteness to the mean subterfuges of equivocal language.

§ 22. By these discoveries of the king's insincerity, and by what seemed his infatuated obstinacy in refusing terms of accommodation, both nations became more and more alienated from him; the one hardly restrained from casting him off, the other ready to leave him to his fate. This ill opinion of the king forms one apology for that action which has exposed the Scots nation to so much reproach—their delivery of his person to the English parliament. Perhaps, if we place ourselves in their situation, it will not appear deserving of quite such indignant censure. It would have shown more generosity to have offered the king an alternative of retiring to Holland; and, from what we now know, he probably would not have neglected the opportunity. To carry him back with their army into Scotland, would have exposed their nation to the most serious dangers. To undertake his defence by arms against England, as the ardent royalists desired, and doubtless the determined republicans no less, would have been, as was proved afterwards, a mad and culpable renewal of the miseries of both kingdoms. He had voluntarily come to their camp; no faith was pledged to him; their very right to retain his person, though they had argued for it with the English parliament, seemed open to much doubt. The circumstance, unquestionably, which has always given a character of apparent baseness to this transaction, is the payment of 400,000*l.* made to them so nearly at the same time that it has passed for the price of the king's person. This sum was part of a larger demand on the score of arrears of pay, and had been agreed upon long before we have any proof or reasonable suspicion of a stipulation to deliver up the king. That the parliament would never have actually paid it in case of a refusal to comply with this requisition, there can be, I presume, no kind of doubt; and of this the Scots must have been fully aware. But whether there were any such secret bargain as had been supposed, or whether they would have delivered him up if there had been no pecuniary expectation in the case, is what I cannot perceive sufficient grounds to pronounce with confidence, though I am much inclined to believe the affirmative of the latter question. And it is deserving of particular observation that the party in the house of commons

which sought most earnestly to obtain possession of the king's person, and carried all the votes for payment of money to the Scots, was that which had no further aim than an accommodation with him, and a settlement of the government on the basis of its fundamental laws, though doubtless on terms very derogatory to his prerogative; while those who opposed each part of the negotiation were the zealous enemies of the king, and, in some instances at least, of the monarchy. The Journals bear witness to this.

§ 23. Whatever might have been the consequence of the king's accepting the propositions of Newcastle, his chance of restoration upon any terms was now in all appearance very slender. He had to encounter enemies more dangerous and implacable than the presbyterians. That faction, which from small and insensible beginnings had acquired continued strength, through ambition in a few, through fanaticism in many, through a despair in some of reconciling the pretensions of royalty with those of the people, was now rapidly ascending to superiority. Though still weak in the house of commons, it had spread prodigiously in the army, especially since its new-modelling at the time of the self-denying ordinance. The presbyterians saw with dismay the growth of their own and the constitution's enemies. But the royalists, who had less to fear from confusion than from any settlement that the commons would be brought to make, rejoiced in the increasing disunion, and fondly believed, like their master, that one or other party must seek assistance at their hands.

The independent party comprehended, besides the members of that religious denomination, a countless brood of fanatical sectaries, nursed in the lap of presbyterianism, and fed with the stimulating aliment she furnished, till their intoxicated fancies could neither be restrained within the limits of her creed nor those of her discipline. The presbyterian zealots were systematically intolerant. A common cause made toleration the doctrine of the sectaries. About the beginning of the war it had been deemed expedient to call together an assembly of divines, nominated by the parliament, and consisting not only of clergymen, but, according to the presbyterian usage, of lay members, peers as well as commoners, by whose advice a general reformation of the church was to be planned. These were chiefly presbyterian, though a small minority of independents, and a few moderate episcopalians, headed by Selden, gave them much trouble. The general imposition of the covenant, and the substitution of the directory for the common prayer (which was forbidden to be used even in any private family, by an ordinance of August, 1654), seemed to assure the triumph of presbyterianism, which became complete, in point of law, by an

ordinance of February 1646, establishing for three years the Scots model of classes, synods, and general assemblies throughout England. But in this very ordinance there was a reservation which wounded the spiritual arrogance of that party. Their favourite tenet had always been the independency of the church. They had rejected, with as much abhorrence as the catholics themselves, the royal supremacy, so far as it controlled the exercise of spiritual discipline. But the house of commons were inclined to part with no portion of that prerogative which they had wrested from the crown. Besides the independents, who were still weak, a party called Erastians,¹ and chiefly composed of the common lawyers, under the guidance of Selden, the sworn foe of every ecclesiastical usurpation, withstood the assembly's pretensions with success. They negatived a declaration of the divine right of presbyterian government. They voted a petition from the assembly, complaining of a recent ordinance as an encroachment on spiritual jurisdiction, to be a breach of privilege. The presbyterian tribunals were made subject to the appellant control of parliament, as those of the Anglican church had been to that of the crown. The cases wherein spiritual censures could be pronounced, or the sacrament denied, instead of being left to the clergy, were defined by law. Whether from dissatisfaction on this account, or some other reason, the presbyterian discipline was never carried into effect except to a certain extent in London and in Lancashire. But the beneficed clergy throughout England, till the return of Charles II., were chiefly, though not entirely, of that denomination.

This party was still so far predominant, having the strong support of the city of London and its corporation, with almost all the peers who remained in their house, that the independents and other sectaries neither opposed this ordinance for its temporary establishment, nor sought anything farther than a toleration for their own worship. The question, as Neal well observes, was not between presbytery and independency, but between presbytery with a toleration and without one. Not merely from their own exclusive bigotry, but from a political alarm by no means ungrounded, the presbyterians stood firmly against all liberty of conscience. But in this again they could not influence the house of commons to suppress the sectaries, though no open declaration

¹ The Erastians were named from Erastus, a German physician in the sixteenth century. The denomination is often used in the present age ignorantly, and therefore indefinitely; but I apprehend that the fundamental principle of his

followers was this:—That, in a commonwealth where the magistrate professes Christianity, it is not convenient that offenders against religion and morality should be punished by the censures of the church, especially by excommunication.

in favour of indulgence was as yet made. It is still the boast of the independents that they first brought forward the great principles of religious toleration (I mean as distinguished from maxims of political expediency) which had been confined to a few philosophical minds—to sir Thomas More, in those days of his better judgment when he planned his republic of Utopia, to Thuanus, or L'Hospital. Such principles are, indeed, naturally congenial to the persecuted; and it is by the alternate oppression of so many different sects that they have now obtained their universal reception. But the independents also assert that they first maintained them while in power—a far higher praise, which, however, can only be allowed them by comparison. Without invidiously glancing at their early conduct in New England, it must be admitted that the continuance of the penal laws against catholics, the prohibition of the episcopalian worship, and the punishment of one or two anti-trinitarians under Cromwell, are proofs that the tolerant principle had not yet acquired perfect vigour. If the independent sectaries were its earliest advocates, it was the Anglican writers, the school of Chillingworth, Hales, Taylor, Locke, and Hoadley, that rendered it victorious.²

The king, as I have said, and his party cherished too sanguine hopes from the disunion of their opponents. Though warned of it by the parliamentary commissioners at Uxbridge, though, in fact, it was quite notorious and undisguised, they seem never to have comprehended that many active spirits looked to the entire subversion of the monarchy. The king in particular was haunted by a prejudice, natural to his obstinate and undiscerning mind, that he was necessary to the settlement of the nation; so that, if he remained firm, the whole parliament and army must be at his feet. Yet during the negotiations at Newcastle there was daily an imminent danger that the majority of parliament, irritated by his delays, would come to some vote excluding him from the throne. The Scots presbyterians, whatever we may think of their behaviour, were sincerely attached, if not by loyal affection, yet by national pride, to the blood of their ancient kings. They thought and spoke of Charles as of a headstrong child, to be restrained and chastised, but never cast off. But in England he had absolutely no friends among the prevailing party; many there were who thought monarchy best for the nation, but none who cared for the king.

² Though the writings of Chillingworth and Hales are not directly in behalf of toleration, no one could relish them without imbibing its spirit in the fullest measure. The great work of Jeremy Taylor, on the Liberty of Prophecy, was published in 1647; and, if we except a few concessions to the temper of the times, which are not reconcilable to its general principles, has left little for those who followed him.

§ 24. This schism, nevertheless, between the parliament and the army was at least in appearance very desirable for Charles, and seemed to afford him an opportunity which a discreet prince might improve to great advantage, though it unfortunately deluded him with chimerical expectations. At the conclusion of the war, which the useless obstinacy of the royalists had protracted till the beginning of 1647, the commons began to take measures for breaking the force of their remaining enemy. They resolved to disband a part of the army, and to send the rest into Ireland. They formed schemes for getting rid of Cromwell, and even made some demur about continuing Fairfax in command. But in all measures that exact promptitude and energy, treachery and timidity are apt to enfeeble the resolutions of a popular assembly. Their demonstrations of enmity were however so alarming to the army, who knew themselves disliked by the people, and dependent for their pay on the parliament; that as early as April, 1647, an overture was secretly made to the king, that they would replace him in his power and dignity. He cautiously answered that he would not involve the kingdom in a fresh war, but should ever feel the strongest sense of this offer from the army. Whether they were discontented at the coldness of this reply, or, as is more probable, the offer had only proceeded from a minority of the officers, no further overture was made, till not long afterwards the bold manœuvre of Joyce had placed the king's person in their power.

§ 25. The first effect of this military violence was to display the parliament's deficiency in political courage. They immediately expunged, by a majority of 96 to 79, a vote of reprobation passed some weeks before, upon a remonstrance from the army which the presbyterians had highly resented, and gave other proofs of retracing their steps. But the army was not inclined to accept their submission in full discharge of the provocation. It had schemes of its own for the reformation and settlement of the kingdom, more extensive than those of the presbyterian faction. It had its own wrongs also to revenge. Advancing towards London, the general and council of war sent up charges of treason against eleven principal members of that party, who obtained leave to retire beyond sea. Here may be said to have fallen the legislative power and civil government of England; which from this hour till that of the Restoration had never more than a momentary and precarious gleam of existence, perpetually interrupted by the sword.

Those who have once bowed their knee to force, must expect that force will be for ever their master. In a few weeks after this submission of the commons to the army, they were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian

politics of the city, who compelled them by actual violence to rescind several of their late votes. Trampled upon by either side, the two speakers, several peers, and a great number of the lower house, deemed it somewhat less ignominious, and certainly more politic, to throw themselves on the protection of the army. They were accordingly soon restored to their places, at the price of a more complete and ir retrievable subjection to the military power than they had already undergone. Though the presbyterians maintained a pertinacious resistance within the walls of the house, it was evident that the real power of command was gone from them, and that Cromwell with the army must either become arbiters between the king and parliament, or crush the remaining authority of both.

§ 26. There are few circumstances in our history which have caused more perplexity to inquirers than the conduct of Cromwell and his friends towards the king in the year 1647. Those who look only at the ambitious and dissembling character of that leader, or at the fierce republicanism imputed to Ireton, will hardly believe that either of them could harbour anything like sincere designs of restoring him even to that remnant of sovereignty which the parliament would have spared. Yet, when we consider attentively the public documents and private memoirs of that period, it does appear probable that their first intentions towards the king were not unfavourable, and so far sincere that it was their project to make use of his name rather than totally to set him aside. But whether by gratifying Cromwell and his associates with honours, and throwing the whole administration into their hands, Charles would have long contrived to keep a tarnished crown on his head, must be very problematical.

§ 27. The new gaolers of this unfortunate prince began by treating him with unusual indulgence, especially in permitting his episcopal chaplains to attend him. This was deemed a pledge of what he thought an invaluable advantage in dealing with the army, that they would not insist upon the covenant, which in fact was nearly as odious to them as to the royalists, though for very different reasons. Charles, naturally sanguine, and utterly incapable in every part of his life of taking a just view of affairs, was extravagantly elated by these equivocal testimonials of good-will. He blindly listened to private insinuations from rash or treacherous friends, that the soldiers were with him, just after his seizure by Joyce. "I would have you to know, sir," he said to Fairfax, "that I have as good an interest in the army as yourself;" an opinion as injudiciously uttered as it was absurdly conceived. These strange expectations account for the ill reception which in the hasty irritation of disappointment he gave to the proposals of the army,

when they were actually tendered to him at Hampton Court, and which seems to have eventually cost him his life. These proposals appear to have been drawn up by Ireton, a lawyer by education, and a man of much courage and capacity. He had been supposed, like a large proportion of the officers, to aim at a settlement of the nation under a democratical polity. But the army, even if their wishes in general went so far, which is hardly evident, were not yet so decidedly masters as to dictate a form of government uncongenial to the ancient laws and fixed prejudices of the people. Something of this tendency is discoverable in the propositions made to the king, which had never appeared in those of the parliament. It was proposed that parliaments should be biennial; that they should never sit less than a hundred and twenty days, nor more than two hundred and forty; that the representation of the commons should be reformed, by abolishing small boroughs and increasing the number of members for counties, so as to render the house of commons, as near as might be, an equal representation of the whole. In respect of the militia and some other points, they either followed the parliamentary propositions of Newcastle, or modified them favourably for the king. They excepted a very small number of the king's adherents from the privilege of paying a composition for their estates, and set that of the rest considerably lower than had been fixed by the parliament. They stipulated that the royalists should not sit in the next parliament. As to religion, they provided for liberty of conscience, declared against the imposition of the covenant, and, by insisting on the retrenchment of the coercive jurisdiction of bishops and the abrogation of penalties for not reading the common prayer, left it to be implied that both might continue established. The whole tenor of these propositions was in a style far more respectful to the king, and lenient towards his adherents, than had ever been adopted since the beginning of the war. The sincerity indeed of these overtures might be very questionable if Cromwell had been concerned in them; but they proceeded from those elective tribunes called Agitators, who had been established in every regiment to superintend the interests of the army. And the terms were surely as good as Charles had any reason to hope. The severities against his party were mitigated. The grand obstacles to all accommodation, the covenant and presbyterian establishment, were at once removed. For the changes projected in the constitution of parliament, they were not necessarily injurious to the monarchy. That parliament should not be dissolved until it had sat a certain time was so salutary a provision, that the triennial act was hardly complete without it.

It is however probable, from the king's extreme tenaciousness of

his prerogative, that these were the conditions that he found it most difficult to endure. Having obtained, through sir John Berkley, a sight of the propositions before they were openly made, he expressed much displeasure; and said that, if the army were inclined to close with him, they would never have demanded such hard terms. He seems to have principally objected, at least in words, to the exception of seven unnamed persons from pardon, to the exclusion of his party from the next parliament, and to the want of any articles in favour of the church. Berkley endeavoured to show him that it was not likely that the army, if meaning sincerely, would ask less than this. But the king, still tampering with the Scots, and keeping his eyes fixed on the city and parliament, at that moment came to an open breach with the army, disdainfully refused the propositions when publicly tendered to him, with such expressions of misplaced resentment and preposterous confidence as convinced the officers that they could neither conciliate nor trust him. This unexpected haughtiness lost him all chance with those proud and republican spirits; and as they succeeded about the same time in bridling the presbyterian party in parliament, there seemed no necessity for an agreement with the king, and their former determinations of altering the frame of government returned with more revengeful fury against his person.

§ 28. Charles's continuance at Hampton Court, there can be little doubt, would have exposed him to such imminent risk that, in escaping from thence, he acted on a reasonable principle of self-preservation. He might probably, with due precautions, have reached France or Jersey. But the hastiness of his retreat from Hampton Court giving no time, he fell again into the toils through the helplessness of his situation and the unfortunate counsels of one whom he trusted. The fortitude of his own mind sustained him in this state of captivity and entire seclusion from his friends. No one, however sensible to the infirmities of Charles's disposition and the defects of his understanding, can refuse admiration to that patient firmness and unaided acuteness which he displayed throughout the last and most melancholy year of his life. He had now abandoned all expectation of obtaining any present terms for the church or crown. He proposed, therefore, what he had privately empowered Murray to offer the year before, to confirm the presbyterian government for three years, and to give up the militia during his whole life, with other concessions of importance. To preserve the church lands from sale, to shield his friends from proscription, to obtain a legal security for the restoration of the monarchy in his son, were from henceforth the main objects of all his efforts. It was, however, far too late, even for these moderate

conditions of peace. Upon his declining to pass four bills tendered to him as preliminaries of a treaty, which, on that very account, besides his objections to part of their contents, he justly considered as unfair, the parliament voted that no more addresses should be made to him, and that they would receive no more messages. He was placed in close and solitary confinement; and at a meeting of the principal officers at Windsor it was concluded to bring him to trial, and avenge the blood shed in the war by an awful example of punishment; Cromwell and Ireton, if either of them had been ever favourable to the king, acceded at this time to the severity of the rest.

§ 29. Yet, in the midst of this peril and seeming abandonment, his affairs were really less desperate than they had been; and a few rays of light broke for a time through the clouds that enveloped him. From the hour that the Scots delivered him up at Newcastle they seem to have felt the discredit of such an action, and longed for the opportunity of redeeming their public name. They perceived more and more that a well-disciplined army, under a subtle chief inveterately hostile to them, were rapidly becoming masters of England. Instead of that covenanted alliance, that unity in church and state they had expected, they were to look for all the jealousy and dissension that a complete discordance in civil and spiritual polity could inspire. Their commissioners therefore in England, the earl of Lanark, always a moderate royalist, and the earl of Lauderdale, a warm presbyterian, had kept up a secret intercourse with the king at Hampton Court. After his detention at Carisbrook, they openly declared themselves against the four bills proposed by the English parliament, and at length concluded a private treaty with him, by which, on certain terms quite as favourable as he could justly expect, they bound themselves to enter England with an army in order to restore him to his freedom and dignity. This invasion was to be combined with risings in various parts of the country: the presbyterian and royalist, though still retaining much of animosity towards each other, concurring at least in abhorrence of military usurpation; and the common people having very generally returned to that affectionate respect for the king's person, which sympathy for his sufferings, and a sense how little they had been gainers by the change of government, must naturally have excited. The unfortunate issue of the Scots expedition under the duke of Hamilton, and of the various insurrections throughout England, quelled by the vigilance and good conduct of Fairfax and Cromwell, is well known. But these formidable manifestations of the public sentiment in favour of peace with the king on honourable conditions, wherein the city of London, ruled by the presbyterian ministers, took a share, compelled the house of commons to retract its measures. They came to a vote, by 165 to 99, that they would

not alter the fundamental government by king, lords, and commons; they abandoned their impeachment against seven peers, the most moderate of the upper house, and the most obnoxious to the army; they restored the eleven members to their seats; they revoked their resolution against a personal treaty with the king, and even that which required his assent by certain preliminary articles. In a word, the party for distinction's sake called presbyterian, but now rather to be denominated constitutional, regained its ascendancy. This change in the councils of parliament brought on the treaty of Newport.

§ 30. The treaty of Newport was set on foot and managed by those politicians of the house of lords who, having long suspected no danger to themselves but from the power of the king, had discovered, somewhat of the latest, that the crown itself was at stake, and that their own privileges were set on the same cast. Nothing was more remote from the intentions of the earl of Northumberland or lord Say than to see themselves pushed from their seats by such upstarts as Ireton and Harrison; and their present mortification afforded a proof how men reckoned wise in their generation become the dupes of their own selfish, crafty, and pusillanimous policy. They now grew anxious to see a treaty concluded with the king. Sensible that it was necessary to anticipate, if possible, the return of Cromwell from the north, they implored him to comply at once with all the propositions of parliament, or at least to yield in the first instance as far as he meant to go. They had not, however, mitigated in any degree the rigorous conditions so often proposed; nor did the king during this treaty obtain any reciprocal concession worth mentioning in return for his surrender of almost all that could be demanded. His real error was to have entered upon any treaty, and still more to have drawn it out by tardy and ineffectual capitulations. There had long been only one course either for safety or for honour, the abdication of his royal office; now probably too late to preserve his life, but still more honourable than the treaty of Newport.

§ 31. There can be no more erroneous opinion than that of such as believe that the desire of overturning the monarchy produced the civil war, rather than that the civil war brought on the former. In a peaceful and ancient kingdom like England the thought of change could not spontaneously arise. A very few speculative men, by the study of antiquity, or by observation of the prosperity of Venice and Holland, might be led to an abstract preference of republican politics; some fanatics might aspire to a Jewish theocracy; but at the meeting of the long parliament we have not the slightest cause to suppose that any party, or any number of persons among its members, had formed what must then have appeared so extravagant a conception.

The insuperable distrust of the king's designs, the irritation excited by the sufferings of the war, the impracticability, which every attempt at negotiation displayed, of obtaining his acquiescence to terms deemed indispensable, gradually created a powerful faction, whose chief bond of union was a determination to set him aside. What further scheme they had planned is uncertain: none probably in which any number were agreed: some looked to the prince of Wales, others, perhaps, at one time to the elector palatine; but necessity itself must have suggested to many the idea of a republican settlement. In the new-modelled army of 1645, composed of independents and enthusiasts of every denomination, a fervid eagerness for changes in the civil polity, as well as in religion, was soon found to predominate. Not checked, like the two houses, by attachment to forms, and by the influence of lawyers, they launched forth into varied projects of reform, sometimes judicious, or at least plausible, sometimes wildly fanatical. They reckoned the king a tyrant, whom, as they might fight against, they might also put to death, and whom it were folly to provoke if he were again to become their master. Elated with their victories, they began already in imagination to carve out the kingdom for themselves; and remembered that saying so congenial to a revolutionary army, "that the first of monarchs was a successful leader, the first of nobles were his followers."

The knowledge of this innovating spirit in the army gave confidence to the violent party in parliament, and increased its numbers by the accession of some of those to whom nature has given a fine sense for discerning their own advantage. It was doubtless swollen through the publication of the king's letters, and his pertinacity in clinging to his prerogative. And the complexion of the house of commons was materially altered by the introduction at once of a large body of fresh members. They had at the beginning abstained from issuing writs to replace those whose death or expulsion had left their seats vacant. These vacancies, by the disabling votes against all the king's party, became so numerous that it seemed a glaring violation of the popular principles to which they appealed to carry on the public business with so maimed a representation of the people. It was, however, plainly impossible to have elections in many parts of the kingdom while the royal army was in strength; and the change, by filling up nearly two hundred vacancies at once, was likely to become so important, that some feared that the cavaliers, others that the independents and republicans, might find their advantage in it. The latter party were generally earnest for new elections; and carried their point against the presbyterians in September, 1645, when new writs were ordered for all the places which were left

deficient of one or both representatives. The result of these elections, though a few persons rather friendly to the king came into the house, was on the whole very favourable to the army. The self-denying ordinance no longer being in operation, the principal officers were elected on every side; and, with not many exceptions, recruited the ranks of that small body which had already been marked by implacable dislike of the king, and by zeal for a total new-modelling of the government. In the summer of 1646 this party had so far obtained the upper hand, that, according to one of our best authorities, the Scots commissioners had all imaginable difficulty to prevent his deposition. In the course of the year 1647 more overt proofs of a design to change the established constitution were given by a party out of doors. But the first decisive proof, perhaps, which the journals of parliament afford of the existence of a republican party, was the vote of 22nd September, 1647, that they would once again make application to the king for those things which they judged necessary for the welfare and safety of the kingdom. This was carried by 70 to 23. Their subsequent resolution of January 4, 1648, against any further addresses to the king, which passed by a majority of 141 to 91, was a virtual renunciation of allegiance. The lords, after a warm debate, concurred in this vote. And the army had in November, 1647, before the king's escape from Hampton Court, published a declaration of their design for the settlement of the nation under a sovereign representative assembly, which should possess authority to make or repeal laws, and to call magistrates to account.

We are not certainly to conclude that all who, in 1648, had made up their minds against the king's restoration, were equally averse to all regal government. The prince of Wales had taken so active, and, for a moment, so successful a share in the war of that year, that his father's enemies were become his own. Meetings however were held, where the military and parliamentary chiefs discussed the schemes of raising the duke of York, or his younger brother the duke of Gloucester, to the throne. Cromwell especially wavered, or pretended to waver, as to the settlement of the nation; nor is there any evidence, so far as I know, that he had ever professed himself averse to monarchy, till, dexterously mounting on the wave which he could not stem, he led on those zealots who had resolved to celebrate the inauguration of their new commonwealth with the blood of a victim king.

§ 32. It was about the end of 1647, as I have said, that the principal officers took the determination, which had been already menaced by some of the agitators, of bringing the king, as the first and greatest delinquent, to public justice. Too stern and haughty, too confident of the righteousness of their actions, to think of

private assassination, they sought to gratify their pride by the solemnity and notoriousness, by the very infamy and eventual danger, of an act unprecedented in the history of nations. Throughout the year 1648 this design, though suspended, became familiar to the people's expectation. The commonwealth's men and levellers, the various sectaries (admitting a few exceptions), grew clamorous for the king's death. Petitions were presented to the commons, praying for justice on all delinquents, from the highest to the lowest. And not long afterwards the general officers of the army came forward with a long remonstrance against any treaty, and insisting that the capital and grand author of their troubles be speedily brought to justice, for the treason, blood, and mischief whereof he had been guilty. This was soon followed by the vote of the presbyterian party, that the answers of the king to the propositions of both houses are a ground for the house to proceed upon for the settlement of the peace of the kingdom, by the violent expulsion, or, as it was called, seclusion, of all the presbyterian members from the house, and the ordinance of a minority, constituting the high court of justice for the trial of the king.

§ 33. A very small number among those who sat in this strange tribunal upon Charles I. were undoubtedly capable of taking statesmanlike views of the interests of their party, and might consider his death a politic expedient for consolidating the new settlement. It seemed to involve the army, which had openly abetted the act, and even the nation by its passive consent, in such inexpiable guilt towards the royal family, that neither common prudence nor a sense of shame would permit them to suffer its restoration. But by far the greater part of the regicides such considerations were either overlooked or kept in the background. Their more powerful motive was that fierce fanatical hatred of the king, the natural fruit of long civil dissension, inflamed by preachers more dark and sanguinary than those they addressed, and by a perverted study of the Jewish scriptures. They had been wrought to believe, not that his execution would be justified by state necessity or any such feeble grounds of human reasoning, but that it was a bounden duty, which with a safe conscience they could not neglect. Such was the persuasion of Ludlow and Hutchinson, the most respectable names among the regicides; both of them free from all suspicion of interestedness or hypocrisy, and less intoxicated than the rest by fanaticism.

§ 34. The execution of Charles I. has been mentioned in later ages by a few with unlimited praise—by some with faint and ambiguous censure—by most with vehement reprobation. My own judgment will possibly be anticipated by the reader of the

the principal body of the gentry, and a large proportion of other classes. If his adherents did not form, as I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal law. Hence, if Charles, after having by a course of victories or the defection of the people prostrated all opposition, had abused his triumph by the execution of Essex or Hampden, Fairfax or Cromwell, I think that later ages would have disapproved of their deaths as positively, though not quite as vehemently, as they have of his own. The line is not easily drawn, in abstract reasoning, between the treason which is justly punished, and the social schism which is beyond the proper boundaries of law; but the civil war of England seems plainly to fall within the latter description. *These objections strike me as unanswerable, even if the trial of Charles had been sanctioned by the voice of the nation through its legitimate representatives, or at least such a fair and full convention as might, in great necessity, supply the place of lawful authority.* But it was, as we all know, the act of a bold but very small minority, who, having forcibly expelled their colleagues from parliament, had usurped, under the protection of a military force, that power which all England reckoned illegal. I cannot perceive what there was in the imagined solemnity of this proceeding, in that insolent mockery of the forms of justice, accompanied by all unfairness and inhumanity in its circumstances, which can alleviate the guilt of the transaction; and if it be alleged that many of the regicides were firmly persuaded in their consciences of the right and duty of condemning the king, we may surely remember that private murderers have often had the same apology.

§ 35. In discussing each particular transaction in the life of Charles, as of any other sovereign, it is required by the truth of history to spare no just animadversion upon his faults; especially where much art has been employed by the writers most in repute to carry the stream of public prejudice in an opposite direction. But when we come to a general estimate of his character, we should act unfairly not to give their full weight to those peculiar circumstances of his condition in this worldly scene which tend to account for and extenuate his failings. The station of kings is, in a moral sense, so unfavourable, that those who are least prone to servile admiration should be on their guard against the opposite error of an uncandid severity. There seems no fairer method of

that he was tenacious of ends and irresolute as to means; better fitted to reason than to act; never swerving from a few main principles, but diffident of his own judgment in its application to the course of affairs. His chief talent was an acuteness in dispute; a talent not usually much exercised by kings, but which the strange events of his life called into action. He had, unfortunately for himself, gone into the study most fashionable in that age, of polemical theology; and, though not at all learned, had read enough of the English divines to maintain their side of the current controversies with much dexterity. But this unkingly talent was a poor compensation for the continual mistakes of his judgment in the art of government and the conduct of his affairs.

§ 36. It seems natural not to leave untouched in this place the famous problem of the *Icon Basiliké*, which has been deemed an irrefragable evidence both of the virtues and the talents of Charles. But the authenticity of this work can hardly be any longer a question among judicious men. We have letters from Gauden and his family asserting it as his own in the most express terms, and making it the ground of a claim for reward. We know that the king's sons were both convinced that it was not their father's composition, and that Clarendon was satisfied of the same. If Gauden not only set up a false claim to so famous a work, but persuaded those nearest to the king to surrender that precious record, as it had been reckoned, of his dying sentiments, it was an instance of successful impudence which has hardly a parallel. But I should be content to rest the case on that internal evidence which has been so often alleged for its authenticity. The *Icon* has, to my judgment, all the air of a fictitious composition. Cold, stiff, elaborate, without a single allusion that bespeaks the superior knowledge of facts which the king must have possessed, it contains little but those rhetorical commonplaces which would suggest themselves to any forger. The prejudices of party, which exercise a strange influence in matters of taste, have caused this book to be extravagantly praised. It has doubtless a certain air of grave dignity, and the periods are more artificially constructed than was usual in that age (a circumstance not in favour of its authenticity); but the style is encumbered with frigid metaphors, as is said to be the case in Gauden's acknowledged writings; and the thoughts are neither beautiful nor always exempt from affectation. The king's letters during his imprisonment, preserved in the Clarendon State Papers, and especially one to his son, from which an extract is given in the *History of the Rebellion*, are more satisfactory proofs of his integrity than the laboured self-panegyrics of the *Icon Basiliké*.

PART II.

§ 1. Abolition of the Monarchy and of the House of Lords. § 2. Commonwealth. § 3. Schemes of Cromwell. His Conversations with Whitelock. § 4. Unpopularity of the Parliament. § 5. Their Fall. § 6. Little Parliament. § 7. Instrument of Government. Cromwell Protector. § 8. Parliament called by Cromwell. Dissolved by him. § 9. Intrigues of the King and his Party. § 10. Insurrectionary Movements in 1655. Rigorous Measures of Cromwell. § 11. His Arbitrary Government. § 12. He summons another Parliament. Designs to take the Crown. The Project fails. But his Authority of Protector is augmented. § 13. He aims at forming a new House of Lords. § 14. His Death and Character. § 15. Richard, his Son, succeeds him. § 16. Is supported by some prudent Men. § 17. But opposed by a Coalition. § 18. Calls a Parliament. The Army overthrow both. § 19. Long Parliament restored. Expelled again, and again restored. § 20. Impossibility of establishing a Republic. § 21. Intrigues of the Royalists. They unite with the Presbyterians. § 22. Conspiracy of 1659. § 23. Interference of Monk. His Disimulation. Secluded Members return to their Seats. § 24. Difficulties about the Restoration. § 25. Whether previous Conditions required. § 26. Plan of reviving the Treaty of Newport inexpedient. § 27. Difficulty of framing Conditions. § 28. Conduct of the Convention about this not blamable. § 29. Except in respect of the Militia. § 30. Conduct of Monk.

§ 1. THE death of Charles I. was pressed forward rather through personal hatred and superstition than out of any notion of its necessity to secure a republican administration. That party was still so weak that the commons came more slowly, and with more difference of judgment, than might be expected, to an absolute renunciation of monarchy. They voted, indeed, that the people are, under God, the original of all just power; and that whatever is enacted by the commons in parliament hath the force of law, although the consent and concurrence of the king or house of peers be not had thereto; terms manifestly not exclusive of the nominal continuance of the two latter. They altered the public style from the king's name to that of the parliament, and gave other indications of their intentions; but the vote for the abolition of monarchy did not pass till the 7th February, after a debate, according to Whitelock, but without a division.

The house of lords, still less able than the crown to withstand the inroads of democracy, fell by a vote of the commons at the same time. They resolved, that the house of peers was useless and dangerous, and ought to be abolished. It should be noticed that there was no intention of taking away the dignity of peerage; the lords, throughout the whole duration of the commonwealth, retained their titles, not only in common usage, but in all legal and parliamentary documents.

furnish; and that the reverence paid by the people to that title would serve to curb the extravagancies of those now in power. Whitelock replied, that their friends having engaged in a persuasion, though erroneous, that their rights and liberties would be better preserved under a commonwealth than a monarchy, this state of the question would be wholly changed by Cromwell's assumption of the title, and it would become a private controversy between his family and that of the Stuarts. Finally, on the other's encouragement to speak fully his thoughts, he told him "that no expedient seemed so desirable as a private treaty with the king, in which he might not only provide for the security of his friends and the greatness of his family, but set limits to monarchical power, keeping the command of the militia in his own hands." Cromwell merely said "that such a step would require great consideration;" but broke off with marks of displeasure, and consulted Whitelock much less for some years afterwards.

§ 4. These projects of usurpation could not deceive the watchfulness of those whom Cromwell pretended to serve. He had on several occasions thrown off enough of his habitual dissimulation to show the commonwealth's men that he was theirs only by accident, with none of their fondness for republican polity. The parliament in its present wreck contained few leaders of superior ability, but a natural instinct would dictate to such an assembly the distrust of a popular general, even if there had been less to alarm them in his behaviour. They had no means, however, to withstand him. The creatures themselves of military force, their pretensions to direct or control the army could only move scorn or resentment. Their claim to a legal authority, and to the name of representatives of a people who rejected and abhorred them, was perfectly impudent. When the house was fullest their numbers did not much exceed one hundred; but the ordinary divisions, even on subjects of the highest moment, show an attendance of but fifty or sixty members. They had retained in their hands, notwithstanding the appointment of a council of state, most of whom were from their own body, a great part of the executive government, especially the disposal of offices. These they largely shared among themselves or their dependents; and in many of their votes gave occasion to such charges of injustice and partiality as, whether true or false, will attach to a body of men so obviously self-interested.

The republican interest in the nation was almost wholly composed of two parties, both offshoots deriving strength from the great stock of the army; the levellers, of whom Lilburne and Wildman are the most known, and the anabaptists, fifth-monarchy men, and other fanatical sectaries, headed by Harrison, Hewson, Overton, and a great number of officers. Though the sectaries seemed to build

their revolutionary schemes more on their own religious views than the levellers, they coincided in most of their objects and demands. An equal representation of the people in short parliaments, an extensive alteration of the common law, the abolition of tithes, and indeed of all regular stipends to the ministry, a full toleration of religious worship, were reformations which they concurred in requiring as the only substantial fruits of their arduous struggle. Some among the wilder sects dreamed of overthrowing all civil institutions. These factions were not without friends in the commons. But the greater part were not inclined to gratify them by taking away the provision of the church, and much less to divest themselves of their own authority. They voted indeed that tithes should cease as soon as a competent maintenance should be otherwise provided for the clergy. They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay. They proceeded rather slowly and reluctantly to frame a scheme for future parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterwards carried into effect by Cromwell.

§ 5. It was with much delay and difficulty, amidst the loud murmurs of their adherents, that they could be brought to any vote in regard to their own dissolution. It passed on November 17, 1651, after some very close divisions, that they should cease to exist as a parliament on November 3, 1654. The republicans out of doors, who deemed annual, or at least biennial, parliaments essential to their definition of liberty, were indignant at so unreasonable a prolongation. Thus they forfeited the good-will of the only party on whom they could have relied. Cromwell dexterously aggravated their faults: he complained of their delaying the settlement of the nation; he persuaded the fanatics of his concurrence in their own schemes; the parliament, in turn, conspired against his power, and, as the conspiracies of so many can never be secret, let it be seen that one or other must be destroyed—thus giving his forcible expulsion of them the pretext of self-defence. They fell with no regret, or rather with much joy of the nation, except a few who dreaded more from the alternative of military usurpation or anarchy than from an assembly which still retained the names and forms so precious in the eyes of those who adhere to the ancient institutions of their country.

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his supporters having lost this question on a division of 141 to 136, thought it time to interfere. He gave them to understand that the government by a single person and a parliament was a fundamental principle, not subject to their discussion and obliged every member to a recognition of it, solemnly promising neither to attempt nor to concur in any alteration of that article. The commons voted, however, that this recognition should not extend to the entire instrument, consisting of forty-two articles; and went on to discuss them with such heat and prolixity that, after five months, the limited term of their session, the protector, having obtained the ratification of his new scheme neither so fully nor so willingly as he desired, particularly having been disappointed by the great majority of 200 to 60, which voted the protectorate to be elective, not hereditary, dissolved the parliament with no small marks of dissatisfaction.

§ 9. The banished king, meanwhile, began to recover a little of that political importance which the battle of Worcester had seemed almost to extinguish. So ill supported by his English adherents on that occasion, so incapable, with a better army than he had any prospect of ever raising again, to make a stand against the genius and fortune of the usurper, it was vain to expect that he could be restored by any domestic insurrection, until the disunion of the prevailing factions should offer some more favourable opportunity. But this was too distant a prospect for his court of starving followers. He had from the beginning looked around for foreign assistance. But France was distracted by her own troubles; Spain deemed it better policy to cultivate the new commonwealth; and even Holland, though engaged in a dangerous war with England, did not think it worth while to accept his offer of joining her fleet, in order to try his influence with the English seamen. Totally unscrupulous as to the means by which he might reign, even at the moment that he was treating to become the covenanted king of Scotland, with every solemn renunciation of popery, Charles had recourse to a very delicate negotiation, which deserves remark, as having led, after a long course of time, but by gradual steps, to the final downfall of his family. With the advice of Ormond, and with the concurrence of Hyde, he attempted to interest the pope (Innocent X.) on his side, as the most powerful intercessor with the catholic princes of Europe. For this purpose it was necessary to promise toleration at least to the catholics. The king's ambassadors to Spain in 1650, Cottington and Hyde, and other agents despatched to Rome at the same time, were empowered to offer an entire repeal of the penal laws. The king himself, some time afterwards, wrote a letter to the pope, wherein he repeated this assurance. That court, however, well aware of the hereditary duplicity of the Stuarts,

received his overtures with haughty contempt. The pope returned no answer to the king's letter; but one was received after many months from the general of the jesuits, requiring that Charles should declare himself a catholic, since the goods of the church could not be lavished for the support of an heretical prince. Even after this insolent refusal, the wretched exiles still clung at times to the vain hope of succour which as protestants and Englishmen they could not honourably demand. But many of them remarked too clearly the conditions on which assistance might be obtained; the court of Charles, openly or in secret, began to pass over to the catholic church; and the contagion soon spread to the highest places.

In the year 1654 the royalist intrigues in England began to grow more active and formidable through the accession of many discontented republicans. Though there could be no coalition, properly speaking, between such irreconcilable factions, they came into a sort of tacit agreement, as is not unusual, to act in concert for the only purpose they entertained alike, the destruction of their common enemy. Major Wildman, a name not very familiar to the general reader, but which occurs perpetually, for almost half a century, when we look into more secret history, one of those dark and restless spirits who delight in the deep game of conspiracy against every government, seems to have been the first mover of this unnatural combination. He had been early engaged in the schemes of the levellers, and was exposed to the jealous observation of the ruling powers. It appears most probable that his views were to establish a commonwealth, and to make the royalists his dupes. In his correspondence, however, with Brussels, he engaged to restore the king. Both parties were to rise in arms against the new tyranny; and the nation's temper was tried by clandestine intrigues in almost every county. Greater reliance however was placed on the project of assassinating Cromwell. Neither party were by any means scrupulous on this score: if we have not positive evidence of Charles's concurrence in this scheme, it would be preposterous to suppose that he would have been withheld by any moral hesitation. It is frequently mentioned without any disapprobation by Clarendon in his private letters; and, as the royalists certainly justified the murders of Aseham and Dorislaus, they could not in common sense or consistency have scrupled one so incomparably more capable of defence. A Mr. Gerard suffered death for one of these plots to kill Cromwell; justly sentenced, though by an illegal tribunal.

§ 10. In the year 1655, Penruddock, a Wiltshire gentleman, with a very trifling force, entered Salisbury at the time of the assizes; and, declaring for the king, seized the judge and the

seats. The excluded members, consisting partly of the republican, partly of the presbyterian factions, published a remonstrance in a very high strain, but obtained no redress.

Cromwell, like so many other usurpers, felt his position too precarious, or his vanity ungratified, without the name which mankind have agreed to worship. He had, as evidently appears from the conversations recorded by Whitelock, long since aspired to this titular, as well as to the real, pre-eminence; and the banished king's friends had contemplated the probability of his obtaining it with dismay. Affectionate towards his family, he wished to assure the stability of his son's succession, and perhaps to please the vanity of his daughters. It was indeed a very reasonable object with one who had already advanced so far. His assumption of the crown was desirable to many different classes; to the lawyers, who, besides their regard for the established constitution, knew that an ancient statute would protect those who served a *de facto* king in case of a restoration of the exiled family; to the nobility, who perceived that their legislative right must immediately revive; to the clergy, who judged the regular ministry more likely to be secure under a monarchy; to the people, who hoped for any settlement that would put an end to perpetual changes; to all of every rank and profession who dreaded the continuance of military despotism, and demanded only the just rights and privileges of their country. A king of England could succeed only to a bounded prerogative, and must govern by the known laws; a protector, as the nation had well felt, with less nominal authority, had all the sword could confer. And, though there might be little chance that Oliver would abate one jot of a despotism for which not the times of the Tudors could furnish a precedent, yet his life was far worn, and under a successor it was to be expected that future parliaments might assert again all the liberties for which they had contended against Charles.

The scheme, however, of founding a new royal line failed of accomplishment, as is well known, through his own caution, which deterred him from encountering the decided opposition of his army.¹ Some of his contemporaries seem to have deemed this abandonment, or more properly suspension, of so splendid a design rather derogatory to his firmness. But few men were better judges than Cromwell of what might be achieved by daring. It is certainly not impossible that, by arresting Lambert, Whalley and some other generals, he might have crushed for the moment any tendency to open resistance. But the experiment would have been infinitely hazardous. He had gone too far in the path of violence to re-
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¹ The major-generals, or at least many of them, joined the opposition to Cromwell's royalty.

the high road of law by any short cut. King or protector, he must have intimidated every parliament, or sunk under its encroachments. A new-modelled army might have served his turn; but there would have been great difficulties in its formation. It had from the beginning been the misfortune of his government that it rested on a basis too narrow for its safety. For two years he had reigned with no support but the independent scottaries and the army. The army or its commanders becoming odious to the people, he had sacrificed them to the hope of popularity, by abolishing the civil prefectures of the major-generals, and permitting a bill for again decimating the royalists to be thrown out of the house. Their disgust and resentment, excited by an artful intriguer, Lambert, who aspired at least to the succession of the protectorship, found scope in the new project of monarchy, naturally obnoxious to the prejudices of true fanatics, who still fancied themselves to have contended for a republican liberty. We find that even Fleetwood, allied by marriage to Cromwell, and not involved in the discontent of the major-generals, in all the sincerity of his clouded understanding, revolted from the invidious title, and would have retired from service had it been assumed. There seems therefore reason to think that Cromwell's refusal of the crown was an inevitable mortification. But he undoubtedly did not lose sight of the object for the short remainder of his life.

The fundamental charter of the English commonwealth, under the protectorship of Cromwell, had been the instrument of government, drawn up by the council of officers in December, 1653, and approved with modifications by the parliament of the next year. It was now changed to the "Petition and Advice," tendered to him by the present parliament in May, 1657, which made very essential innovations in the frame of polity. Though he bore, as formerly, the name of lord protector, we may say, speaking according to theoretical classification, and without reference to his actual exercise of power, which was nearly the same as before, that the English government in the first period should be ranged in the order of republics, though with a chief magistrate at its head; but that from 1657 it became substantially a monarchy, and ought to be placed in that class, notwithstanding the difference in the style of its sovereign. The Petition and Advice had been compiled with a constant respect to that article which conferred the royal dignity on the protector; and when this was withdrawn at his request, the rest of the instrument was preserved with all its implied attributions of sovereignty. The style is that of subjects addressing a monarch; the powers it bestows, the privileges it claims, are supposed, according to the expressions employed, the one to be already his own, the other to emanate from his will. The necessity of his

consent to laws, though nowhere mentioned, seems to have been taken for granted. An unlimited power of appointing a successor, unknown even to constitutional kingdoms, was vested in the protector. He was inaugurated with solemnities applicable to monarchs; and what of itself is a sufficient test of the monarchical and republican species of government, an oath of allegiance was taken by every member of parliament to the protector singly, without any mention of the commonwealth. It is surely, therefore, no paradox to assert that Oliver Cromwell was *de facto* sovereign of England during the interval from June, 1657, to his death in September, 1658.

§ 13. The zealous opponents of royalty could not be insensible that they had seen it revive in everything except a title, which was not likely to remain long behind. It was too late, however, to oppose the first magistrate's personal authority. But there remained one important point of contention, which the new constitution had not fully settled. It was therein provided that the parliament should consist of two houses; namely, the commons, and what they always termed, with an awkward generality, the other house. This was to consist of not more than seventy, nor less than forty persons, to be nominated by the protector, and, as it stood at first, to be approved by the commons. But, before the close of the session, the court party prevailed so far as to procure the repeal of this last condition; and Cromwell accordingly issued writs of summons to persons of various parties, a few of the ancient peers, a few of his adversaries, whom he hoped to gain over, or at least to exclude from the commons, and of course a majority of his steady adherents. To all these he gave the title of lords, and in the next session their assembly denominated itself the lords' house. This measure encountered considerable difficulty. The republican party, almost as much attached to that vote which had declared the house of lords useless as to that which had abolished the monarchy, and well aware of the intimate connexion between the two, resisted the assumption of this aristocratic title, instead of that of the other house, which the Petition and Advice had sanctioned. The real peers feared to compromise their hereditary right by sitting in an assembly where the tenure was only during life; and declined some of their colleagues, such as Pride and Hewson, low-born and insolent men, whom Cromwell had rather injudiciously bribed with this new nobility; though, with these few exceptions, his house of lords was respectably composed. Hence, in the short session of January, 1658, wherein the late excluded members were permitted to take their seats, so many difficulties were made about acknowledging the lords' house by that denomination, that the protector hastily and angrily dissolved the parliament.

owing nothing to their pleasure. They had begun to cabal during his last illness. Though they did not oppose Richard's succession, they continued to hold meetings, not quite public, but exciting intense alarm in his council. As if disdaining the command of a clownish boy, they proposed that the station of lord general should be separated from that of protector, with the power over all commissions in the army, and conferred on Fleetwood; who, though his brother-in-law, was a certain instrument in their hands. The vain ambitious Lambert, aspiring, on the credit of some military reputation, to wield the sceptre of Cromwell, influenced this juncture; while the commonwealth's party, some of whom were, or had been, in the army, drew over several of these ignorant and fanatical soldiers. Thurloe describes the posture of affairs in September and October, while all Europe was admiring the peaceable transmission of Oliver's power, as most alarming; and it may almost be said that Richard had already fallen when he was proclaimed the lord protector of England.

§ 18. It was necessary to summon a parliament on the usual score of obtaining money. But some of the council feared a parliament almost as much as they did the army. They called one, however, to meet January 27, 1659, issuing writs in the ordinary manner to all boroughs which had been accustomed to send members, and consequently abandoning the reformed model of Cromwell. This Ludlow attributes to their expectation of greater influence among the small boroughs; but it may possibly be ascribed still more to a desire of returning by little and little to the ancient constitution, by eradicating the revolutionary innovations. The new parliament consisted of courtiers, as the Cromwell party were always denominated, of presbyterians, among whom some of cavalier principles crept in, and of republicans; the two latter nearly balancing, with their united weight, the ministerial majority. They began with an oath of allegiance to the protector, as presented by the late parliament, which, as usual in such cases, his enemies generally took without scruple. But upon a bill being offered for the recognition of Richard as the undoubted lord protector and chief magistrate of the commonwealth, they made a stand against the word recognise, which was carried with difficulty, and caused him the mortification of throwing out the epithet undoubted. They subsequently discussed his negative voice in passing bills, which had been purposely slurred over in the Petition and Advice; but now everything was disputed. The thorny question as to the powers and privileges of the other houses came next into debate. It was carried by 177 to 113 to transact business with them. Upon the whole, the court party, notwithstanding this coalition of very heterogeneous interests against them,

were sufficiently powerful to disappoint the hopes which the royalist intriguers had entertained. A strong body of lawyers, led by Maynard, adhered to the government, which was supported also on some occasions by a part of the presbyterian interest, or, as then called, the moderate party; and Richard would probably have concluded the session with no loss of power, if either he or his parliament could have withstood the more formidable cabal of Wallingford House. This knot of officers, Fleetwood, Desborough, Berry, Sydenham, being the names most known among them, formed a coalition with the republican faction, who despaired of any success in parliament. The dissolution of that assembly was the main article of this league. Alarmed at the notorious caballing of the officers, the commons voted that, during the sitting of the parliament, there should be no general council, or meeting of the officers of the army, without leave of the protector and of both houses. Such a vote could only accelerate their own downfall. Three days afterwards the junto of Wallingford House insisted with Richard that he should dissolve parliament; to which, according to the advice of most of his council, and perhaps by an overruling necessity, he gave his consent. This was immediately followed by a declaration of the council of officers, calling back the long parliament, such as it had been expelled in 1653, to those seats which had been filled meanwhile by so many transient successors.

§ 19. It is not in general difficult for an armed force to destroy a government; but something else than the sword is required to create one. It seemed now the policy, as much as duty, of the officers to obey that civil power they had set up; for to rule ostensibly was an impracticable scheme. But the contempt they felt for their pretended masters, and even a sort of necessity arising out of the blindness and passion of that little oligarchy, drove them to a step still more ruinous to their cause than that of deposing Richard, the expulsion once more of that assembly, now worn out and ridiculous in all men's eyes, yet seeming a sort of frail protection against mere anarchy and the terror of the sword. Lambert, the chief actor in this last act of violence, and indeed many of the rest, might plead the right of self-defence. The prevailing faction in the parliament, led by Haslerig, a bold and headstrong man, perceived that, with very inferior pretensions, Lambert was aiming to tread in the steps of Cromwell; and, remembering their neglect of opportunities, as they thought, in permitting the one to overthrow them, fancied that they would anticipate the other. Their intemperate votes cashiering Lambert, Desborough, and other officers, brought on, as every man of more prudence than Haslerig must have foreseen, an immediate revolution that crushed once more their boasted commonwealth. They revived

again a few months after, not by any exertion of the people, who hated alike both parties, in their behalf, but through the disunion of their real masters, the army, and vented the impotent and injudicious rage of a desperate faction on all who had not gone every length on their side, till scarce any man of eminence was left to muster under the standard of Haslerig and his little knot of associates.

§ 20. In the year 1659 it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious; it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican church, the luncheonian rant of sectaries, the morose preciseness of puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances (a gaily mode of expressing the same thing), or to Haslerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers who, in this utter confusion and abject state of their party, were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation; whether a fixed number should go out or not by rotation; and all those details of political mechanism so important in the eyes of theorists? Every project of this description must have wanted what alone could give it either the pretext of legitimate existence or the chance of permanency, popular consent; the republican party, if we exclude those who would have had a protector, and the fanatics who expected the appearance of Jesus Christ, was incalculably small; not, perhaps, amounting in the whole nation to more than a few hundred persons.

§ 21. The little court of Charles at Brussels watched with trembling hope those convulsive struggles of their enemies. Though the apparent peaceableness of Richard's government gave them some mortification, they continued to spread their tails through the country, emissaries, and found a very general willingness to return to the ancient constitution under its hereditary sovereign. Both the cavaliers, who, though numerous and ardent, were impeded

easily have brought about the Restoration without his concurrence; and, even as it was, the language held in the house of commons before their dissolution, the votes expunging all that appeared on their journals against the regal government and the house of lords, and, above all, the course of the elections for the new parliament, made it sufficiently evident that the general had delayed his assurances of loyalty till they had lost a part of their value. It is, however, a full explanation of Monk's public conduct that he was not secure of the army, chiefly imbued with fanatical principles, and bearing an inveterate hatred towards the name of Charles Stuart. In the beginning of that month many of the officers, instigated by Haslerig and his friends, had protested to Monk against the proceedings of the house, insisting that they should abjure the king and house of lords. He repressed their mutinous spirit, and bade them obey the parliament, as he should do. Hence he redoubled his protestations of abhorrence of monarchy, and seemed for several weeks, in exterior demonstrations, rather the grand impediment to the king's restoration than the one person who was to have the credit for it. Meanwhile he silently proceeded in displacing the officers whom he could least trust, and disposing the regiments near to the metropolis or at a distance, according to his knowledge of their tempers; the parliament having given him a commission as lord-general of all the forces in the three kingdoms. The delay of Monk in privately assuring the king of his fidelity is still not easy to be explained, but may have proceeded from a want of confidence in Charles's secrecy, or that of his counsellors.

§ 24. The months of March and April, 1660, were a period of extreme inquietude, during which every one spoke of the king's restoration as imminent, yet none could distinctly perceive by what means it would be effected, and much less how the difficulties of such a settlement could be overcome. As the moment approached, men turned their attention more to the obstacles and dangers that lay in their way. The restoration of a banished family, concerning whom they knew little, and what they knew not entirely to their satisfaction, with ruined, perhaps revengeful, followers; the returning ascendancy of a distressed party, who had sustained losses that could not be repaired without fresh changes of property, injuries that could not be atoned without fresh severities; the conflicting pretensions of two churches—one loth to release its claims, the other to yield its possession; the unsettled dissensions between the crown and parliament, suspended only by civil war and usurpation; all seemed pregnant with such difficulties that prudent men could hardly look forward to the impending revolution without some hesitation and anxiety. The presbyterians, generally speaking, had always been on their guard against an unconditional restoration.

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They felt much more of hatred to the prevailing power than of attachment to the house of Stuart, and had no disposition to relinquish, either as to church or state government, those principles for which they had fought against Charles I. Hence they began, from the very time that they entered into the coalition (that is, the spring and summer of 1659), to talk of the treaty of Newport as if all that had passed since their vote of the 5th December, 1648, that the king's concessions were a sufficient ground whereon to proceed to the settlement of the kingdom, had been like a hideous dream, from which they had awakened to proceed exactly in their former course. The council of state, appointed on the 23rd of February, two days after the return of the secluded members, consisted principally of this party. And there can, I conceive, be no question that, if Monk had continued his neutrality to the last, they would, in conjunction with the new parliament, have sent over propositions for the king's acceptance. Meetings were held of the chief presbyterian lords, Manchester, Northumberland, Bedford, Say, with Pierpoint (who, finding it too late to prevent the king's return, endeavoured to render it as little dangerous as possible), Hollis, Annesley, sir William Waller, Lewis, and other leaders of that party. Monk sometimes attended on these occasions, and always urged the most rigid limitations. His sincerity in this was the less suspected, that his wife, to whom he was notoriously submissive, was entirely presbyterian, though a friend to the king; and his own preference of that sect had always been declared in a more consistent and unequivocal manner than was usual to his dark temper.

These projected limitations, which but a few weeks before Charles would have thankfully accepted, seemed now intolerable; so rapidly do men learn, in the course of prosperous fortune, to scorn what they just before hardly presumed to expect. Those seemed his friends, not who desired to restore him, but who would do so at the least sacrifice of his power and pride. Several of the council, and others in high posts, sent word that they would resist the imposition of unreasonable terms. Monk himself redeemed his ambiguous and dilatory behaviour by taking the restoration, as it were, out of the hands of the council, and suggesting the judicious scheme of anticipating their proposals by the king's letter to the two houses of parliament. The elections meantime had taken a course which the faction now in power by no means regarded with satisfaction. The tide ran so strongly for the king's friends, that it was as much as the presbyterians could effect, with the weight of government in their hands, to obtain about an equality of strength with the cavaliers in the convention parliament.

§ 25. It has been a frequent reproach to the conductors of this

Scotland was sufficient to show how little any sense of honour or dignity would have stood in his way. But on what grounds did his English friends, nay, some of the presbyterians themselves, advise his submission to the dictates of that party? It was in the expectation that the next free parliament, summoned by his own writ, would undo all this work of stipulation, and restore him to an unfettered prerogative. And this expectation there was every ground, from the temper of the nation, to entertain. Unless the convention parliament had bargained for its own perpetuity, or the privy council had been made immovable, or a military force independent of the crown had been kept up to overawe the people (all of them most unconstitutional and abominable usurpations), there was no possibility of maintaining the conditions, whatever they might have been, from the want of which so much mischief is fancied to have sprung. Evils did take place, dangers did arise, the liberties of England were once more impaired; but these are far less to be ascribed to the actors in the restoration than to the next parliament, and to the nation who chose it.

§ 29. On the 25th of April the commons met and elected Grimston, a moderate presbyterian, as their speaker. On the same day the doors of the house of lords were found open; and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval.* A message was sent down to the commons on April 27, desiring a conference on the great affairs of the kingdom. This was the first time that word had been used for more than eleven years. But the commons, in returning an answer to this message, still employed the word nation. It was determined that the conference should take place on the ensuing Tuesday, the first of May. In this conference there can be no doubt that the question of further securities against the power of the crown would have been discussed. But Monk, whether from conviction of their inexpedience or to atone for his ambiguous delay, had determined to prevent any encroachment on the prerogative. He caused the king's letter to the council of state and to the two houses of parliament to be delivered on that very day. A burst of enthusiastic joy testified their long-repressed wishes; and, when the conference took place the earl of Manchester was instructed to let the commons know that the lords "do own and declare that, according to the ancient and fundamental laws of this kingdom, the government is and ought to be by king, lords, and commons." On the same day the commons resolved to agree in this vote, and appointed a committee to report what pretended acts and ordinances were inconsistent with it.

* These were the earls of Manchester, Suffolk, Leeds, Essex, Warwick, and Northumberland, Lincoln, Denbigh, and Grey, Maynard.

It is, however, so far from being true that this convention gave itself up to a blind confidence in the king, that their journals during the month of May bear witness to a considerable activity in furthering provisions which the circumstances appeared to require. They appointed a committee on May 3rd to consider of the king's letter and declaration, both holding forth, it will be remembered, all promises of indemnity, and everything that could tranquillize apprehension, and to propose bills accordingly, especially for taking away military tenures. One bill was brought into the house to secure lands purchased from the trustees of the late parliament; another, to establish ministers already settled in benefices; a third, for a general indemnity; a fourth, to take away tenures in chivalry and wardship; a fifth, to make void all grants of honour or estate made by the late or present king since May, 1642. Finally, on the very 29th of May, we find a bill read twice and committed, for the confirmation of privilege of parliament, Magna Charta, the Petition of Right, and other great constitutional statutes. These measures, though some of them were never completed, proved that the restoration was not carried forward with so thoughtless a precipitancy and neglect of liberty as has been asserted.

There was undoubtedly one very important matter of past controversy which they may seem to have avoided, the power over the militia. They silently gave up that momentous question. Yet it was become, in a practical sense, incomparably more important that the representatives of the commons should retain a control over the land forces of the nation than it had been at the commencement of the controversy. War and usurpation had sown the dragon's teeth in our fields; and, instead of the peaceable trained bands of former ages, the citizen soldiers who could not be marched beyond their counties, we had a veteran army accustomed to tread upon the civil authority at the bidding of their superiors, and used alike to govern and obey. It seemed prodigiously dangerous to give up this weapon into the hands of our new sovereign. The experience of other countries as well as our own demonstrated that the public liberty could never be secure if a large standing army should be kept on foot, or any standing army without consent of parliament. But this salutary restriction the convention parliament did not think fit to propose; and in this respect I certainly consider them as having stopped short of adequate security.

§ 30. Of Monk himself it may, I think, be said that, if his conduct in this revolution was not that of a high-minded patriot, it did not deserve all the reproach that has been so frequently thrown on it. No one can, without forfeiting all pretensions to have his own word believed, excuse his incomparable deceit and perjury; a masterpiece, no doubt, as it ought to be reckoned by those who set

at nought the obligations of veracity in public transactions, of that wisdom which is not from above. But, in seconding the public wish for the king's restoration, a step which few perhaps can be so much in love with fanatical and tyrannous usurpation as to condemn, he seems to have used what influence he possessed—an influence by no means commanding—to render the new settlement as little injurious as possible to public and private interests. If he frustrated the scheme of throwing the executive authority into the hands of a presbyterian oligarchy, I, for one, can see no great cause for censure; nor is it quite reasonable to expect that a soldier of fortune, inured to the exercise of arbitrary power, and exempt from the prevailing religious fanaticism which must be felt or despised, should have partaken a fervent zeal for liberty, as little congenial to his temperament as it was to his profession. He certainly did not satisfy the king, even in his first promises of support, when he advised an absolute indemnity, and the preservation of actual interests in the lands of the crown and church. In the first debates on the bill of indemnity, when the case of the regicides came into discussion, he pressed for the smallest number of exceptions from pardon; and, though his conduct after the king's return displayed his accustomed prudence, it is evident that, if he had retained great influence in the council, which he assuredly did not, he would have maintained as much as possible of the existing settlement in the church. The deepest stain on his memory is the production of Argyle's private letters on his trial in Scotland; nor indeed can Monk be regarded, upon the whole, as an estimable man, though his prudence and success may entitle him, in the common acceptance of the word, to be reckoned a great one.

CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND
TO THE FALL OF THE CABAL ADMINISTRATION.

§ 1. Popular Joy at the Restoration. § 2. Proceedings of the Convention Parliament. § 3. Act of Indemnity. Exclusion of the Regicides and others. § 4. Discussions between the Houses on it. Execution of Regicides. § 5. Restitution of Crown and Church Lands. § 6. Discontent of the Royalists. § 7. Settlement of the Revenue. Abolition of Military Tenures. Excise granted instead. § 8. Army disbanded. § 9. Clergy restored to their Benefices. § 10. Hopes of the Presbyterians from the King. § 11. Projects for a Compromise. § 12. King's Declaration in Favour of it. § 13. Convention Parliament dissolved. § 14. Different Complexion of the next. § 15. Condemnation of Vane. Its Injustice. § 16. Acts replacing the Crown in its Prerogatives. § 17. Corporation Act. § 18. Repeal of Triennial Act. Star-chamber not restored. § 19. Attachment of the Parliament to the Established Church. § 20. Presbyterians deceived by the King. Savoy Conference. § 21. Act of Uniformity. § 22. Ejection of Nonconformist Clergy. § 23. Hopes of the Catholics. Bias of the King towards them. Resisted by Clarendon and the Parliament. § 24. Declaration for Indulgence. Objected to by the Commons. § 25. Act against Conventicles. § 26. Another of the same kind. § 27. Dissatisfaction increases. § 28. Private Life of the King. § 29. Opposition in Parliament. § 30. Appropriation of Supplies. § 31. Commission of Public Accounts. § 32. Decline of Clarendon's Power. Loss of the King's Favour. § 33. Coalition against him. § 34. His impeachment. Some Articles of it not unfounded. Illegal Imprisonments. Sale of Dunkirk. Solicitation of French Money. § 35. His Faults as a Minister. § 36. His pusillanimous Flight and consequent Banishment. § 37. Cabal Ministry. Scheme of Comprehension and Indulgence. § 38. Triple Alliance. § 39. Intrigue with France. King's Desire to be Absolute. § 40. Secret Treaty of 1670. Its Objects. § 41. Differences between Charles and Louis as to the Mode of its Execution. § 42. Fresh Severities against Dissenters. § 43. Dutch War. § 44. Declaration of Indulgence. Opposed by Parliament and withdrawn. § 45. Test Act. § 46. Fall of Shaftesbury and his Colleagues.

§ It is universally acknowledged that no measure was ever more national, or has ever produced more testimonies of public approbation, than the restoration of Charles II. Nor can this be attributed to the usual fickleness of the multitude. For the late government, whether under the parliament or the protector, had never obtained the sanction of popular consent, nor could have subsisted for a day without the support of the army. The king's return seemed to the people the harbinger of a real liberty, instead of that bastard commonwealth which had insulted them with its name—a liberty secure from enormous assessments, which, even when lawfully imposed, the English had always paid with reluctance, and from the insolent despotism of the soldiery. The young and lively looked forward to a release from the rigours of fanaticism, and were too ready to exchange that hypocritical austerity of the late times

for a licentiousness and impiety that became characteristic of the present. In this tumult of exulting hope and joy there was much to excite anxious forebodings in calmer men; and it was by no means safe to pronounce that a change so generally demanded, and in most respects so expedient, could be effected without very serious sacrifices of public and particular interests.

§ 2. Four subjects of great importance, and some of them very difficult, occupied the convention parliament from the time of the king's return till their dissolution in the following December: a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government; an adjustment of the claims for reparation which the crown, the church, and private royalists had to prefer; a provision for the king's revenue, consistent with the abolition of military tenures; and the settlement of the church. These were in effect the articles of a sort of treaty between the king and the nation, without some legislative provisions as to which, no stable or tranquil course of law could be expected.

§ 3. The king, in his well-known declaration from Breda, dated the 14th of April, had laid down, as it were, certain bases of his restoration, as to some points which he knew to excite much apprehension in England. One of these was a free and general pardon to all his subjects, saving only such as should be excepted by parliament. It had always been the king's expectation, or at least that of his chancellor, that all who had been immediately concerned in his father's death should be delivered up to punishment; and, in the most unpropitious state of his fortunes, while making all professions of pardon and favour to different parties, he had constantly excepted the regicides. Monk, however, had advised, in his first messages to the king, that none, or at most not above four, should be excepted on this account; and the commons voted that not more than seven persons should lose the benefit of the indemnity both as to life and estate. Yet, after having named seven of the late king's judges, they proceeded in a few days to add several more, who had been concerned in managing his trial, or otherwise forward in promoting his death. They went on to pitch upon twenty persons, whom, on account of their deep concern in the transactions of the last twelve years, they determined to affect with penalties not extending to death, and to be determined by some future act of parliament. As their passions grew warmer, and the wishes of the court became better known, they came to except from all benefit of the indemnity such of the king's judges as had not rendered themselves to justice according to the late proclamation. In this state the bill of indemnity and oblivion was sent up to the lords. But in that house the old royalists had a more decisive

preponderance than among the commons. They voted to except all who had signed the death-warrant against Charles I., or sat when sentence was pronounced, and five others by name Hacker, Vane, Lambert, Haslerig, and Axtell. They struck out, on the other hand, the clause reserving Lenthall and the rest of the same class for future penalties. They made other alterations in the bill to render it more severe; and with these, after a pretty long delay, and a positive message from the king, requesting them to hasten their proceedings (an irregularity to which they took no exception, and which in the eyes of the nation was justified by the circumstances), they returned the bill to the commons.

§ 4. The vindictive spirit displayed by the upper house was not agreeable to the better temper of the commons, where the presbyterian or moderate party retained great influence. Though the king's judges (such at least as had signed the death-warrant) were equally guilty, it was consonant to the practice of all humane governments to make a selection for capital penalties; and to put forty or fifty persons to death for that offence seemed a very sanguinary course of proceeding, and not likely to promote the conciliation and oblivion so much cried up. But there was a yet stronger objection to this severity. The king had published a proclamation, in a few days after his landing, commanding his father's judges to render themselves up within fourteen days, on pain of being excepted from any pardon or indemnity, either as to their lives or estates. Many had voluntarily come in, having put an obvious construction on this proclamation. It seems to admit of little question that the king's faith was pledged to those persons, and that no advantage could be taken of any ambiguity in the proclamation, without as real perfidiousness as if the words had been more express. They were at least entitled to be set at liberty, and to have a reasonable time allowed for making their escape, if it were determined to exclude them from the indemnity. The commons were more mindful of the king's honour and their own than his nearest advisers. But the violent royalists were gaining ground among them, and it ended in a compromise. They left Hacker and Axtell, who had been prominently concerned in the king's death, to their fate. They even admitted the exceptions of Vane and Lambert, contenting themselves with a joint address of both houses to the king, that, if they should be attainted, execution as to their lives might be remitted. Haslerig was saved on a division of 141 to 116, partly through the intercession of Monk, who had pledged his word to him. Most of the king's judges were entirely excepted; but with a proviso in favour of such as had surrendered according to the proclamation, that the sentence should not be executed without a special act of parliament. Others

were reserved for penalties not extending to life, to be inflicted by a future act. About twenty enumerated persons, as well as those who had pronounced sentence of death in any of the late illegal high courts of justice, were rendered incapable of any civil or military office. Thus, after three months' delay, which had given room to distrust the boasted clemency and forgiveness of the victorious royalists, the act of indemnity was finally passed. Ten persons suffered death soon afterwards for the murder of Charles I.; and three more who had been seized in Holland, after a considerable lapse of time. There can be no reasonable ground for censuring either the king or the parliament for their punishment, except that Hugh Peters, though a very odious fanatic, was not so directly implicated in the king's death as many who escaped, and the execution of Scrope, who had surrendered under the proclamation, was an inexcusable breach of faith.

§ 5. A question apparently far more difficult was that of restitution and redress. The crown lands, those of the church, the estates in certain instances of eminent royalists, had been sold by the authority of the late usurpers, and that not at very low rates, considering the precariousness of the title. This naturally seemed a material obstacle to the restoration of ancient rights, especially in the case of ecclesiastical corporations, whom men are commonly less disposed to favour than private persons. The clergy themselves had never expected that their estates would revert to them in full propriety, and would probably have been contented, at the moment of the king's return, to grant easy leases to the purchasers. Nor were the house of commons, many of whom were interested in these sales, inclined to let in the former owners without conditions. A bill was accordingly brought into the house at the beginning of the session to confirm sales, or to give indemnity to the purchasers. I do not find its provisions more particularly stated. The zeal of the royalists soon caused the crown lands to be excepted. But the house adhered to the principle of composition as to ecclesiastical property, and kept the bill a long time in debate. At the adjournment in September the chancellor told them his majesty had thought much upon the business, and done much for the accommodation of many particular persons, and doubted not but that, before they met again, a good progress would be made, so that the persons concerned would be much to blame if they received not full satisfaction, promising also to advise with some of the commons as to that settlement. These expressions indicate a design to take the matter out of the hands of parliament. For it was Hyde's firm resolution to replace the church in the whole of its property, without any other regard to the actual possessors than the right owners should severally think it equitable to display. And this, as may

be supposed, proved very small. No further steps were taken on the meeting of parliament after the adjournment; and by the dissolution the parties were left to the common course of law. The church, the crown, the dispossessed royalists, re-entered triumphantly on their lands: there were no means of repelling the owners' claim, nor any satisfaction to be looked for by the purchasers under so defective a title. It must be owned that the facility with which this was accomplished is a striking testimony to the strength of the new government and the concurrence of the nation. This is the more remarkable, if it be true, as Ludlow informs us, that the chapter lands had been sold by the trustees appointed by parliament at the clear income of fifteen or seventeen years' purchase.

§ 6. The great body, however, of the suffering cavaliers, who had compounded for their delinquency under the ordinances of the long parliament, or whose estates had been for a time in sequestration, found no remedy for these losses by any process of law. The act of indemnity put a stop to any suits they might have instituted against any persons concerned in carrying these illegal ordinances into execution. They were compelled to put up with their poverty, having the additional mortification of seeing one class, namely, the clergy, who had been engaged in the same cause, not alike in their fortune, and many even of the vanquished republicans undisturbed in wealth which, directly or indirectly, they deemed acquired at their own expense. They called the statute an act of indemnity for the king's enemies, and of oblivion for his friends. They murmured at the ingratitude of Charles, as if he were bound to forfeit his honour and risk his throne for their sakes. They conceived a deep hatred of Clarendon, whose steady adherence to the great principles of the act of indemnity is the most honourable act of his public life. And the discontent engendered by their disappointed hopes led to some part of the opposition afterwards experienced by the king, and still more certainly to the coalition against the minister.

§ 7. No one cause had so eminently contributed to the dissensions between the crown and parliament, in the two last reigns, as the disproportion between the public revenues under a rapidly-increasing depreciation in the value of money, and the exigencies, at least on some occasions, of the administration. There could be no apology for the parsimonious reluctance of the commons to grant supplies, except the constitutional necessity of rendering them the condition of redress of grievances; and in the present circumstances, satisfied, as they seemed at least to be, with the securities they had obtained, and enamoured of their new sovereign, it was reasonable to make some further provision for the current expenditure. Yet this was to be meted out with such prudence as not to place him beyond the

necessity of frequent recurrence to their aid. A committee was accordingly appointed "to consider of settling such a revenue on his majesty as may maintain the splendour and grandeur of his kingly office, and preserve the crown from want and from being undervalued by his neighbours." By their report it appeared that the revenue of Charles I. from 1637 to 1641 had amounted on an average to about 900,000*l.*, of which full 200,000*l.* arose from sources either not warranted by law or no longer available. The house resolved to raise the present king's income to 1,200,000*l.* per annum, a sum perhaps sufficient in those times for the ordinary charges of government. But the funds assigned to produce his revenue soon fell short of the parliament's calculation.

One ancient fountain that had poured its stream into the royal treasury it was now determined to close up for ever. The feudal tenures had brought with them at the Conquest, or not long after, those incidents, as they were usually called, or emoluments of signiory, which remained after the military character of fiefs had been nearly effaced, especially the right of detaining the estates of minors holding in chivalry without accounting for the profits. This galling burthen, incomparably more ruinous to the tenant than beneficial to the lord, it had long been determined to remove. Charles, at the treaty of Newport, had consented to give it up for a fixed revenue of 100,000*l.*; and this was almost the only part of that ineffectual compact which the present parliament were anxious to complete. The king, though likely to lose much patronage and influence, and what passed with lawyers for a high attribute of his prerogative, could not decently refuse a commutation so evidently advantageous to the aristocracy. No great difference of opinion subsisting as to the expediency of taking away military tenures, it remained only to decide from what resources the commutation revenue should spring. Two schemes were suggested; the one, a permanent tax on lands held in chivalry (which, as distinguished from those in socage, were alone liable to the feudal burthens); the other, an excise on beer and some other liquors. It is evident that the former was founded on a just principle, while the latter transferred a particular burthen to the community. But the self-interest which so unhappily predominates even in representative assemblies, with the aid of the courtiers, who knew that an excise increasing with the riches of the country was far more desirable for the crown than a fixed land-tax, caused the former to be carried, though by the very small majority of two voices. The statute 12 Car. II. c. 24, takes away the court of wards, with all wardships and forfeitures for marriage by reason of tenure, all primer seisins and fines for alienation, aids, eseuages, homages, and tenures by chivalry without exception, save the honorary services

of grand serjeanty ; converting all such tenures into common socage. The same statute abolishes those famous rights of purveyance and pre-emption, the fruitful theme of so many complaining parliaments ; and this relief of the people from a general burthen may serve in some measure as an apology for the imposition of the excise. This act may be said to have wrought an important change in the spirit of our constitution, by reducing what is emphatically called the prerogative of the crown, and which, by its practical exhibition in these two vexatious exercises of power, wardship and purveyance, kept up in the minds of the people a more distinct perception, as well as more awe, of the monarchy, than could be felt in later periods, when it has become, as it were, merged in the common course of law, and blended with the very complex mechanism of our institutions. This great innovation, however, is properly to be referred to the revolution of 1641, which put an end to the court of star-chamber, and suspended the feudal superiorities. Hence, with all the misconduct of the two last Stuarts, and all the tendency towards arbitrary power that their government often displayed, we must perceive that the constitution had put on, in a very great degree, its modern character during that period ; the boundaries of prerogative were better understood ; its pretensions, at least in public, were less enormous ; and not so many violent and oppressive, certainly not so many illegal, acts were committed towards individuals as under the two first of their family.

§ 8. In fixing upon 1,200,000*l.* as a competent revenue for the crown, the commons tacitly gave it to be understood that a regular military force was not among the necessities for which they meant to provide. They looked upon the army, notwithstanding its recent services, with that apprehension and jealousy which became an English house of commons. They were still supporting it by monthly assessments of 70,000*l.*, and could gain no relief by the king's restoration till that charge came to an end. A bill therefore was sent up to the lords before their adjournment in September, providing money for disbanding the land forces. This was done during the recess : the soldiers received their arrears with many fair words of praise, and the nation saw itself, with delight and thankfulness to the king, released from its heavy burthens and the dread of servitude. Yet Charles had too much knowledge of foreign countries, where monarchy flourished in all its plenitude of sovereign power under the guardian sword of a standing army, to part readily with so favourite an instrument of kings. Some of his councillors, and especially the duke of York, dissuaded him from disbanding the army, or at least advised his supplying its place by another. The unsettled state of the kingdom after so momentous a revolution, the dangerous audacity of the fanatical party, whose enterprises

who had endured for their attachment to its discipline and to the crown so many years of poverty and privation, stood in a still more favourable light, and had an evident claim to restoration. The commons accordingly, before the king's return, prepared a bill for confirming and restoring ministers with the two-fold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy who by ejection or forced surrender had made way for intruders, and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies. This act did not pass without opposition from the cavaliers, who panted to retaliate the persecution that had afflicted their church.

This legal security, however, for the enjoyment of their livings gave no satisfaction to the scruples of conscientious men. The episcopal discipline, the Anglican liturgy and ceremonies, having never been abrogated by law, revived of course with the constitutional monarchy; and brought with them all the penalties that the act of uniformity and other statutes had inflicted. The nonconforming clergy threw themselves on the king's compassion, or gratitude, or policy, for relief. The independents, too irreconcilable to the established church for any scheme of comprehension, looked only to that liberty of conscience which the king's declaration from Breda had held forth. But the presbyterians soothed themselves with hopes of retaining their benefices by some compromise with their adversaries. They had never, generally speaking, embraced the rigid principles of the Scottish clergy, and were willing to admit what they called a moderate episcopacy. They offered, accordingly, on the king's request to know their terms, a middle scheme, usually denominated Bishop Usher's Model; not as altogether approving it, but because they could not hope for anything nearer to their own views. This consisted, first, in the appointment of a suffragan bishop for each rural deanery, holding a monthly synod of the presbyters within his district; and, secondly, in an annual diocesan synod of suffragans and representatives of the presbyters, under the presidency of the bishop, and deciding upon all matters before them by plurality of suffrages. But, though such a system was inconsistent with that parity which the rigid presbyterians maintained to be indispensable, and those who espoused it are reckoned, in a theological division, among episcopalians, it was in the eyes of equally rigid churchmen little better than a disguised presbytery, and a real subversion of the Anglican hierarchy.

The presbyterian ministers, or rather a few eminent persons of that class, proceeded to solicit a revision of the liturgy, and a

consideration of the numerous objections which they made to certain passages, while they admitted the lawfulness of a prescribed form. They implored the king also to abolish, or at least not to enjoin as necessary, some of those ceremonies which they scrupled to use, and which in fact had been the original cause of their schism; the surplice, the cross in baptism, the practice of kneeling at the communion, and one or two more. A tone of humble supplication pervades all their language, which some might invidiously contrast with their unbending haughtiness in prosperity. The bishops and other Anglian divines, to whom their propositions were referred, met the offer of capitulation with a scornful and vindictive smile. They held out not the least overture towards a compromise.

§ 12. The king, however, deemed it expedient, during the continuance of a parliament the majority of whom were desirous of union in the church, and had given some indications of their disposition, to keep up the delusion a little longer and prevent the possible consequences of despair. He had already appointed several presbyterian ministers his chaplains, and given them frequent audiences. But during the recess of parliament he published a declaration, wherein, after some compliments to the ministers of the presbyterian opinion and an artful expression of satisfaction that he had found them no enemies to episcopacy or a liturgy, as they had been reported to be, he announces his intention to appoint a sufficient number of suffragan bishops in the larger dioceses; he promises that no bishop should ordain or exercise any part of his spiritual jurisdiction without advice and assistance of his presbyters; that no chancellors or officials of the bishops should use any jurisdiction over the ministry, nor any archdeacon without the advice of a council of his clergy; that the dean and chapter of the diocese, together with an equal number of presbyters, annually chosen by the clergy, should be always advising and assisting at all ordinations, church censures, and other important acts of spiritual jurisdiction. He declared also that he would appoint an equal number of divines of both persuasions to revise the liturgy; desiring that in the mean time none would wholly lay it aside, yet promising that no one should be molested for not using it till it should be reviewed and reformed. With regard to ceremonies, he declared that none should be compelled to receive the sacrament kneeling, nor to use the cross in baptism, nor to bow at the name of Jesus, nor to wear the surplice except in the royal chapel and in cathedrals, nor should subscription to articles not doctrinal be required. He renewed also his declaration from Breda, that no man should be called in question for differences of religious opinion not disturbing the peace of the kingdom.

Though many of the presbyterian party deemed this modification of Anglican episcopacy a departure from their notions of an apostolic church, and inconsistent with their covenant, the majority would doubtless have acquiesced in so extensive a concession from the ruling power. If faithfully executed according to its apparent meaning, it does not seem that the declaration falls very short of their own proposal, the scheme of Usher. The high churchmen, indeed, would have murmured had it been made effectual. But such as were nearest the king's councils well knew that nothing else was intended by it than to scatter dust in men's eyes, and to prevent the interference of parliament. This was soon rendered manifest, when a bill to render the king's declaration effectual was vigorously opposed by the courtiers, and rejected on a second reading by 183 to 157. Nothing could more forcibly demonstrate an intention of breaking faith with the presbyterians than this vote. For the king's declaration was repugnant to the act of uniformity and many other statutes, so that it could not be carried into effect without the authority of parliament, unless by means of such a general dispensing power as no parliament would endure. And it is impossible to question that a bill for confirming it would have easily passed through this house of commons had it not been for the resistance of the government.

§ 13. Charles now dissolved the convention parliament, having obtained from it what was immediately necessary, but well aware that he could better accomplish his objects with another. It was studiously inculcated by the royalist lawyers, that, as this assembly had not been summoned by the king's writ, none of its acts could have any real validity, except by the confirmation of a true parliament. This doctrine, being applicable to the act of indemnity, left the kingdom in a precarious condition till an undeniable security could be obtained, and rendered the dissolution almost necessary. Another parliament was called, of very different composition from the last. Possession and the standing ordinances against royalists had enabled the secluded members of 1648, that is, the adherents of the long parliament, to stem with some degree of success the impetuous tide of loyalty in the last elections, and put them almost upon an equality with the court. But in the new assembly cavaliers and the sons of cavaliers entirely predominated; the great families, the ancient gentry, the episcopal clergy, resumed their influence; the presbyterians and sectarians feared to have their offences remembered; so that we may rather be surprised that about fifty or sixty who had belonged to the opposite side found places in such a parliament, than that its general complexion should be decidedly royalist. The presbyterian faction seemed to lie prostrate at the feet of those over whom they had so long triumphed

without any force of arms or civil convulsion, as if the king had been brought in against their will. Nor did the cavaliers fail to treat them as enemies to monarchy, though it was notorious that the restoration was chiefly owing to their endeavours.

§ 14. The new parliament gave the first proofs of their disposition by voting that all their members should receive the sacrament on a certain day according to the rites of the church of England; and that the solemn league and covenant should be burned by the common hangman. They excited still more serious alarm by an evident reluctance to confirm the late act of indemnity, which the king at the opening of the session had pressed upon their attention. Those who had suffered the sequestrations and other losses of a vanquished party could not endure to abandon what they reckoned a just reparation. But Clarendon adhered with equal integrity and prudence to this fundamental principle of the Restoration; and, after a strong message from the king on the subject, the commons were content to let the bill pass with no new exceptions. They gave, indeed, some relief to the ruined cavaliers by voting 60,000*l.* to be distributed among that class; but so inadequate a compensation did not assuage their discontents.

§ 15. It has been mentioned above that the late house of commons had consented to the exception of Vane and Lambert from indemnity on the king's promise that they should not suffer death. They had lain in the Tower accordingly, without being brought to trial. The regicides who had come in under the proclamation were saved from capital punishment by the former act of indemnity. But the present parliament abhorred this lukewarm lenity. A bill was brought in for the execution of the king's judges in the Tower; and the attorney-general was requested to proceed against Vane and Lambert. The former was dropped in the house of lords; but those formidable chiefs of the commonwealth were brought to trial. Their indictments alleged as overt acts of high treason against Charles II., their exercise of civil and military functions under the usurping government; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person. Under such an accusation many who had been the most earnest in the king's restoration might have stood at the bar.

The condemnation of sir Henry Vane was very questionable, even according to the letter of the law. It was plainly repugnant to its spirit. An excellent statute enacted under Henry VII., assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered when another claimant should gain possession of the throne. It established the duty of allegiance to the existing government upon a general principle; but in its terms it certainly presumed that

government to be a monarchy. This furnished the judges upon the trial of Vane with a distinction of which they willingly availed themselves. They proceeded, however, beyond all bounds of constitutional precedents and of common sense when they determined that Charles II. had been king *de-facto* as well as *de jure* from the moment of his father's death, though, in the words of their senseless sophistry, "kept out of the exercise of his royal authority by traitors and rebels." We may consider, therefore, the execution of Vane as one of the most reprehensible actions of this bad reign. It not only violated the assurance of indemnity, but introduced a principle of sanguinary proscription, which would render the return of what is called legitimate government, under any circumstances, an intolerable curse to a nation.

The king violated his promise by the execution of Vane, as much as the judges strained the law by his conviction. He had assured the last parliament, in answer to their address, that, if Vane and Lambert should be attainted by law, he would not suffer the sentence to be executed. We have on record a remarkable letter of the king to his minister, wherein he expresses his resentment at Vane's bold demeanour during his trial, and intimates a wish for his death, though with some doubts whether it could be honourably done. Doubts of such a nature never lasted long with this prince; and Vane suffered the week after. Lambert, whose submissive behaviour had furnished a contrast with that of Vane, was sent to Guernsey, and remained a prisoner for thirty years.

§ 16. No time was lost, as might be expected from the temper of the commons, in replacing the throne on its constitutional basis after the rude encroachments of the long parliament. They declared that there was no legislative power in either or both houses without the king; that the league and covenant was unlawfully imposed; that the sole supreme command of the militia, and of all forces by sea and land, had ever been by the laws of England the undoubted right of the crown; that neither house of parliament could pretend to it, nor could lawfully levy any war offensive or defensive against his majesty. These last words appeared to go to a dangerous length, and to sanction the suicidal doctrine of absolute non-resistance. They made the law of high treason more strict during the king's life in pursuance of a precedent in the reign of Elizabeth. They restored the bishops to their seats in the house of lords; a step which the last parliament would never have been induced to take, but which met with little opposition from the present. The remembrance of those tumultuous assemblages which had overawed their predecessors in the winter of 1641, and at other times, produced a law against disorderly petitions. This statute provides that no petition or address shall be presented to the king

or either house of parliament by more than ten persons; nor shall any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury.

§ 17. Thus far the new parliament might be said to have acted chiefly on a principle of repairing the breaches recently made in our constitution, and of re-establishing the just boundaries of the executive power; nor would much objection have been offered to their measures, had they gone no farther in the same course. The act for regulating corporations is much more questionable, and displayed a determination to exclude a considerable portion of the community from their civil rights. It enjoined all magistrates and persons bearing offices of trust in corporations to swear that they believed it unlawful, on any pretence whatever, to take arms against the king, and that they abhorred the traitorous position of bearing arms by his authority against his person, or against those that are commissioned by him. They were also to renounce all obligation arising out of the oath called the solemn league and covenant; in case of refusal, to be immediately removed from office. Those elected in futuro were, in addition to the same oaths, to have received the sacrament within one year before their election according to the rites of the English church. These provisions struck at the heart of the presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to parliament a very large proportion of its members. Yet it rarely happens that a political faction is crushed by the terrors of an oath. Many of the more rigid presbyterians refused the conditions imposed by this act; but the majority found pretexts for qualifying themselves.

§ 18. It could not yet be said that this loyal assembly had meddled with those safeguards of public liberty which had been erected by their great predecessors in 1641. The laws that Falkland and Hampden had combined to provide, those bulwarks against the ancient exorbitance of prerogative, stood unscathed; threatened from afar, but not yet betrayed by the garrison. But one of these, the bill for triennial parliaments, wounded the pride of royalty, and gave scandal to its worshippers; not so much on account of its object, as of the securities provided against its violation. Bills were accordingly more than once ordered to be brought in for repealing the triennial act; but no further steps were taken till the king thought it at length necessary in the year 1664 to give them an intimation of his desires. The commons were sufficiently compliant to pass a bill for the repeal of that which had been enacted with unanimous consent in 1641. The preamble recites the said

act to have been "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of parliaments." The bill then repeals and annuls every clause and article in the fullest manner; yet, with an inconsistency not unusual in our statutes, adds a provision that parliaments shall not in future be intermitted for above three years at the most. This clause is evidently framed in a different spirit from the original bill, and may be attributed to the influence of that party in the house which had begun to oppose the court, and already showed itself in considerable strength. Thus the effect of this compromise was that the law of the long parliament subsisted as to its principle, without those unusual clauses which had been enacted to render its observance secure. The king assured them, in giving his assent to the repeal, that he would not be a day more without a parliament on that account. Some parties were anxious to restore the two great levers of prerogative, the courts of star-chamber and high commission; but it may be questionable whether, even amidst the fervid loyalty of 1661, the house of commons would have concurred in re-establishing the star-chamber. They had taken marked precautions in passing an act for the restoration of ecclesiastical jurisdiction, that it should not be construed to restore the high-commission court, or to give validity to the canons of 1640, or to enlarge in any manner the ancient authority of the church. A tribunal still more formidable and obnoxious would hardly have found favour with a body of men who, as their behaviour shortly demonstrated, might rather be taxed with passion and vindictiveness towards a hostile faction, than a deliberate willingness to abandon their English rights and privileges.

§ 19. The striking characteristic of this parliament was a zealous and intolerant attachment to the established church, not losing an atom of their aversion to popery in their abhorrence of protestant dissent. In every former parliament since the Reformation the country party (if I may use such a word, by anticipation, for those gentlemen of landed estates who owed their seats to their provincial importance, as distinguished from courtiers, lawyers, and dependents on the nobility) had incurred with rigid churchmen the reproach of puritanical affections. They were implacable against popery, but disposed to far more indulgence with respect to non-conformity than the very different maxims of Elizabeth and her successors would permit. Yet it is obvious that the puritan commons of James I. and the high-church commons of Charles II. were composed, in a great measure, of the same families, and entirely of the same classes. But, as the arrogance of the prelates had excited indignation, and the sufferings of the scrupulous clergy begotten sympathy in one age, so the reversed scenes of the last

twenty years had given to the former, or their adherents, the advantage of enduring oppression with humility and fortitude, and displayed in the latter, or at least many of their number, those odious and malevolent qualities which adversity had either concealed or rendered less dangerous. The gentry, connected for the most part by birth or education with the episcopal clergy, could not for an instant hesitate between the ancient establishment and one composed of men whose eloquence in preaching was chiefly directed towards the common people, and presupposed a degree of enthusiasm in the hearer which the higher classes rarely possessed. They dreaded the wilder sectaries, foes to property, or at least to its political influence, as much as to the regal constitution; and not unnaturally, though without perfect fairness, confounded the presbyterian or moderate noneconformist in the motley crowd of fanatics, to many of whose tenets he at least more approximated than the church of England minister.

§ 20. There is every reason to presume, as I have already remarked, that the king had no intention but to deceive the presbyterians and their friends in the convention parliament by his declaration of October, 1660. He proceeded, after the dissolution of that assembly, to fill up the number of bishops, who had been reduced to nine, but with no further mention of suffragans, or of the council of presbyters, which had been announced in that declaration. It would have been, however, too flagrant a breach of promise if some show had not been made of desiring a reconciliation on the subordinate details of religious ceremonies and the liturgy. This produced a conference held at the Savoy, in May, 1661 between twenty-one Anglican and as many presbyterian divines the latter were called upon to propose their objections; it being the part of the others to defend. They brought forward so long a list as seemed to raise little hope of agreement. Some of these objections to the service, as may be imagined, were rather captious and hypercritical; yet in many cases they pointed out real defects. As to ceremonies, they dwelt on the same scruples as had from the beginning of Elizabeth's reign produced so unhappy a discordance, and had become inveterate by so much persecution. The conference was managed with great mutual bitterness and recrimination; the one party stimulated by vindictive hatred and the natural arrogance of power; the other irritated by the manifest design of breaking the king's faith, and probably by a sense of their own improvidence in ruining themselves by his restoration. The chief blame, it cannot be dissembled, ought to fall on the churchmen. An opportunity was afforded of healing, in a very great measure, that schism and separation which, if they are to be believed, is one of the worst evils that can befall a Christian com-

munity. They had it in their power to retain, or to expel, a vast number of worthy and laborious ministers of the gospel, with whom they had, in their own estimation, no essential ground of difference. The Savoy conference broke up in anger, each party more exasperated and more irreeconcilable than before. This indeed has been the usual consequence of attempts to bring men to an understanding on religious differences by explanation or compromise.

§ 21. A determination having been taken to admit of no extensive comprehension, it was debated by the government whether to make a few alterations in the liturgy, or to restore the ancient service in every particular. The former advice prevailed, though with no desire or expectation of conciliating any scrupulous persons by the amendments introduced. These were by no means numerous, and in some instances rather chosen in order to irritate and mock the opposite party than from any compliance with their prejudices. It is indeed very probable, from the temper of the new parliament, that they would not have come into more tolerant and healing measures. When the act of uniformity was brought into the house of lords, it was found not only to restore all the ceremonies and other matters to which objection had been taken, but to contain fresh clauses more intolerable than the rest to the presbyterian clergy. One of these enacted that not only every beneficed minister, but fellow of a college, or even schoolmaster, should declare his unfeigned assent and consent to all and everything contained in the book of common prayer. These words, however capable of being eluded and explained away, as such subscriptions always are, seemed to amount, in common use of language, to a complete approbation of an entire volume, such as a man of sense hardly gives to any book, and which, at a time when scrupulous persons were with great difficulty endeavouring to reconcile themselves to submission, placed a new stumblingblock in their way, which, without abandoning their integrity, they found it impossible to surmount.

The temper of those who chiefly managed church affairs at this period displayed itself in another innovation tending to the same end. It had been not unusual from the very beginnings of our Reformation to admit ministers ordained in foreign protestant churches to benefices in England. No re-ordination had ever been practised with respect to those who had received the imposition of hands in a regular church; and hence it appears that the church of England, whatever tenets might latterly have been broached in controversy, did not consider the ordination of presbyters invalid. Though such ordinations as had taken place during the late troubles, and by virtue of which a great part of the actual clergy were in possession, were evidently irregular, on the supposition

that the English episcopal church was then in existence, yet, if the argument from such great convenience as men call necessity was to prevail, it was surely worth while to suffer them to pass without question for the present, enacting provisions, if such were required, for the future. But this did not fall in with the passion and policy of the bishops, who found a pretext for their worldly motives of action in the supposed divine right and necessity of episcopal succession. It was therefore enacted in the statute for uniformity that no person should hold any preferment in England without having received episcopal ordination.

§ 22. The new act of uniformity succeeded to the utmost wishes of its promoters. It provided that every minister should, before the feast of St. Bartholomew, 1662, publicly declare his assent and consent to everything contained in the book of common prayer, on pain of being ipso facto, deprived of his benefice. Though even the long parliament had reserved a fifth of the profits to those who were rejected for refusing the covenant, no mercy could be obtained from the still greater bigotry of the present. When the day of St. Bartholomew came, about 2000 persons resigned their preferments rather than stain their consciences by compliance—an act to which the more liberal Anglicans, after the bitterness of immediate passions had passed away, have accorded that praise which is due to heroic virtue in an enemy. It may justly be said that the episcopal clergy had set an example of similar magnanimity in refusing to take the covenant. Both of them afford striking contrasts to the pliancy of the English church in the greater question of the preceding century, and bear witness to a remarkable integrity and consistency of principle.

No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his declarations, both that from Breida and that which he published in October, 1660. It is idle to say that those declarations were subject to the decision of parliament, as if the crown had no sort of influence in that assembly, nor even any means of making its inclinations known. He had urged them to confirm the act of indemnity, wherein he thought his honour and security concerned: was it less easy to obtain, or at least to ask for, their concurrence in a comprehension or toleration of the presbyterian clergy? Yet, after mocking those persons with pretended favour, and even offering bishoprics to some of their number by way of purchasing their defection, the king made no effort to mitigate the provisions of the act of uniformity; and Clarendon strenuously supported them through both houses of parliament. This behaviour in the minister sprang from real bigotry and dislike of the presbyterians; but Charles was influenced by a very different motive, which had become

the secret spring of all his policy. This requires to be fully explained.

§ 23. Charles, during his misfortunes, had made repeated promises to the pope and the great catholic princes of relaxing the penal laws against his subjects of that religion—promises which he well knew to be the necessary condition of their assistance. And, though he never received any succour which could demand the performance of these assurances, his desire to stand well with France and Spain, as well as a sense of what was really due to the English catholics, would have disposed him to grant every indulgence which the temper of his people should permit. The laws were highly severe, in some cases sanguinary; they were enacted in very different times, from plausible motives of distrust, which it would be now both absurd and ungrateful to retain. The catholics had been the most strenuous of the late king's adherents, the greatest sufferers for their loyalty. There can be no sort of doubt that the king's natural facility, and exemption from all prejudice in favour of established laws, would have led him to afford every indulgence that could be demanded to his catholic subjects, many of whom were his companions or his counsellors, without any propensity towards their religion. But it is morally certain that during the period of his banishment he had imbibed, as deeply and seriously as the character of his mind would permit, a persuasion that, if any scheme of Christianity were true, it could only be found in the bosom of an infallible church; though he was never reconciled, according to the formal profession which she exacts, till the last hours of his life. The secret, however, of his inclinations, though disguised to the world by the appearance, and probably sometimes more than the appearance, of carelessness and infidelity, could not be wholly concealed from his court. Nor are there wanting proofs that the protestantism of both the brothers was greatly suspected in England before the Restoration. These suspicions acquired strength after the king's return, through his manifest intention not to marry a protestant; and still more through the presumptuous demeanour of the opposite party, which seemed to indicate some surer grounds of confidence than were yet manifest. The new parliament in its first session had made it penal to say that the king was a papist or popishly affected; whence the prevalence of that scandal may be inferred.

Charles had no assistance to expect, in his scheme of granting a full toleration to the Roman faith, from his chief adviser Clarendon. A repeal of the sanguinary laws, a reasonable connivance, perhaps in some cases a dispensation—to these favours he would have acceded. But in his creed of policy the legal allowance of any but the established religion was inconsistent with public order, and with

the king's ecclesiastical prerogative. This was also a fixed principle with the parliament, whose implacable resentment towards the sectaries had not inclined them to abate in the least of their abhorrence and apprehension of popery. The church of England, distinctly and exclusively, was their rallying-point; the crown itself stood only second in their affections. The king, therefore, had recourse to a more subtle and indirect policy. If the terms of conformity had been so far relaxed as to suffer the continuance of the presbyterian clergy in their benefices, there was every reason to expect, from their known disposition, a determined hostility to all approaches towards popery, and even to its toleration. It was therefore the policy of those who had the interests of that cause at heart to permit no deviation from the act of uniformity, to resist all endeavours at a comprehension of dissenters within the pale of the church, and to make them look up to the king for indulgence in their separate way of worship. They were to be taught that, amenable to the same laws as the Romanists, exposed to the oppression of the same enemies, they must act in concert for a common benefit. The presbyterian ministers, disheartened at the violence of the parliament, had recourse to Charles, whose affability and fair promises they were loth to distrust, and implored his dispensation for their nonconformity. The king, naturally irresolute, and doubtless sensible that he had made a bad return to those who had contributed so much towards his restoration, was induced, at the strong solicitation of lord Manchester, to promise that he would issue a declaration suspending the execution of the statute for three months. Clarendon, though he had been averse to some of the rigorous clauses inserted in the act of uniformity, was of opinion that, once passed, it ought to be enforced without any connivance; and told the king, likewise, that it was not in his power to preserve those who did not comply with it from deprivation. Yet, as the king's word had been given, he advised him rather to issue such a declaration than to break his promise. But, the bishops vehemently remonstrating against it, and intimating that they would not be parties to a violation of the law by refusing to institute a clerk presented by the patron on an avoidance for want of conformity in the incumbent, the king gave way, and resolved to make no kind of concession. It is remarkable that the noble historian does not seem struck at the enormous and unconstitutional prerogative which a proclamation suspending the statute would have assumed.

§ 24. Instead of this very objectionable measure the king accepted one less arbitrary, and more consonant to his own secret policy. He published a declaration in favour of liberty of conscience, for which no provision had been made, so as to redeem the promises he had held forth at his accession. Adverting to these, he declared

that, "as in the first place he had been zealous to settle the uniformity of the church of England in discipline, ceremony, and government, and should ever constantly maintain it, so, as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereto, he should make it his special care, so far as in him lay without invading the freedom of parliament, to incline their wisdom next approaching sessions to concur with him in making some such act for that purpose as may enable him to exercise with a more universal satisfaction that power of dispensing which he conceived to be inherent in him."

The aim of this declaration was to obtain from parliament a mitigation at least of all penal statutes in matters of religion, but more to serve the interests of catholic than of protestant nonconformity. Except, however, the allusion to the dispensing power, which yet is very moderately alleged, there was nothing in it, according to our present opinions, that should have created offence. But the commons, on their meeting in February, 1663, presented an address denying that any obligation lay on the king by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and slightly intimating that he possessed no such dispensing prerogative as was suggested. They strongly objected to the whole scheme of indulgence, as the means of increasing sectaries, and rather likely to occasion disturbance than to promote peace. The king, undeceived as to the disposition of this loyal assembly to concur in his projects of religious liberty, was driven to more tedious and indirect courses in order to compass his end. He had the mortification of finding that the house of commons had imbibed, partly perhaps in consequence of this declaration, that jealous apprehension of popery which had caused so much of his father's ill fortune. On this topic the watchfulness of an English parliament could never be long at rest. The notorious insolence of the Romish priests, who, proud of the court's favour, disdained to respect the laws enough to disguise themselves, provoked an address to the king that they might be sent out of the kingdom; and bills were brought in to prevent the further growth of popery.

§ 25. Meanwhile, the same remedy, so infallible in the eyes of legislators, was not forgotten to be applied to the opposite disease of protestant dissent. Some had believed that, all scruples of tender conscience in the presbyterian clergy being faction and hypocrisy, they would submit very quietly to the law, when they found all their clamour unavailing to obtain a dispensation from it. The reignation of 2000 beneficed ministers at once, instead of extorting praise, rather inflamed the resentment of their bigoted enemies; especially when they perceived that a public and perpetual tolera-

tion of separate worship was favoured by part of the court. Rumours of conspiracy and insurrection, sometimes false, but gaining credit from the notorious discontent both of the old commonwealth's party, and of many who had never been on that side, were sedulously propagated, in order to keep up the animosity of parliament against the ejected clergy; and these are recited as the pretext of an act passed in 1664, for suppressing seditious conventicles (the epithet being in this place wantonly and unjustly insulting), which inflicted on all persons above the age of sixteen, present at any religious meeting in other manner than is allowed by the practice of the church of England, where five or more persons besides the household should be present, a penalty of three months' imprisonment for the first offence, of six for the second, and of seven years' transportation for the third, on conviction before a single justice of peace. The gaols were filled, not only with ministers who had borne the brunt of former persecutions, but with the laity who attended them; and the hardship was the more grievous, that, the act being ambiguously worded, its construction was left to a single magistrate, generally very adverse to the accused.

§ 26. It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext; and thus to create a necessity for a legislature that will not retrace its steps to pass still onward in the course of severity. In the next session accordingly, held at Oxford in 1665, on account of the plague that ravaged the capital, we find a new and more inevitable blow aimed at the fallen church of Calvin. It was enacted that all persons in holy orders, who had not subscribed the act of uniformity, should swear that it is not unlawful, upon any pretence whatsoever, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavour any alteration of government in church or state. Those who refused this oath were not only made incapable of teaching in schools, but prohibited from coming within five miles of any city, corporate town, or borough sending members to parliament.

This persecuting statute did not pass without the opposition of the earl of Southampton, lord treasurer, and other peers. But archbishop Sheldon, and several bishops, strongly supported the bill, which had undoubtedly the sanction also of Clarendon's authority. The far greater number of the nonconforming clergy refused to take the oath. Even if they could have borne the solemn assertion of the principles of passive obedience in all possible cases, their scrupulous consciences revolted from a pledge to endeavour at no kind of alteration in church and state; an engage-

ment, in its extended sense, irreconcilable with their own principles in religion, and with the civil duties of Englishmen. Yet to quit the town where they had long been connected, and where alone they had friends and disciples, for a residence in country villages, was an exclusion from the ordinary means of subsistence. The church of England had doubtless her provocations; but she made the retaliation much more than commensurate to the injury. No severity, comparable to this coldblooded persecution, had been inflicted by the late powers, even in the ferment and fury of a civil war. Encouraged by this easy triumph, the violent party in the house of commons thought it a good opportunity to give the same test a more sweeping application. A bill was brought in imposing this oath upon the whole nation; that is, I presume (for I do not know that its precise nature is anywhere explained), on all persons in any public or municipal trust. This, however, was lost on a division by a small majority.

§ 27. A joy so excessive and indiscriminating had accompanied the king's restoration, that no prudence or virtue in his government could have averted that reaction of popular sentiment which inevitably follows the disappointment of unreasonable hope. What then was the discontent that must have ensued upon the restoration of Charles II.? The neglected cavalier, the persecuted presbyterian, the disbanded officer, had each his grievance; and felt that he was either in a worse situation than he had formerly been, or at least than he had expected to be. Though there were not the violent acts of military power which had struck every man's eyes under Cromwell, it cannot be said that personal liberty was secure, or that the magistrates had not considerable power of oppression, and that pretty unsparingly exercised towards those suspected of disaffection. The religious persecution was not only far more severe than it was ever during the commonwealth, but perhaps more extensively felt than under Charles I. Though the monthly assessments for the support of the army ceased soon after the restoration, several large grants were made by parliament, especially during the Dutch war; and it appears that in the first seven years of Charles II. the nation paid a far greater sum in taxes than in any preceding period of the same duration. If then the people compared the national fruits of their expenditure, what a contrast they found, how deplorable a falling off in public honour and dignity since the days of the magnanimous usurper!¹ They saw with indignation that Dunkirk, acquired by Cromwell, had been chaffered away by Charles (a transaction justifiable perhaps

¹ Pepys observes, 12th July, 1667, "how did, and made all the neighbour prince-
everybody now-a-days reflect upon Oliver fear him."
and commend him, what brave things he

on the mere balance of profit and loss, but certainly derogatory to the pride of a great nation); that a war, needlessly commenced, had been carried on with much display of bravery in our seamen and their commanders, but no sort of good conduct in the government; and that a petty northern potentate, who would have trembled at the name of the commonwealth, had broken his faith towards us out of mere contempt of our inefficiency.²

§ 28. These discontents were heightened by the private conduct of Charles, if the life of a king can in any sense be private, by a dissoluteness and contempt of moral opinion, which a nation still in the main grave and religious, could not endure. The austere character of the last king had repressed to a considerable degree the common vices of a court which had gone to a scandalous excess under James. But the cavaliers in general affected a profligacy of manners, as their distinction from the fanatical party, which gained ground among those who followed the king's fortunes in exile, and became more flagrant after the restoration. Anecdotes of court excesses, which required not the aid of exaggeration, were in daily circulation through the coffee-houses; those who cared least about the vice not failing to inveigh against the scandal. It is in the nature of a limited monarchy that men should censure very freely the private lives of their princes, as being more exempt from that immoral servility which blinds itself to the distinctions of right and wrong in elevated rank. And as a voluptuous court will always appear prodigal, because all expense in vice is needless, they had the mortification of believing that the public revenues were wasted on the vilest associates of the king's debauchery. We are, however, much indebted to the memory of Barbara duchess of Cleveland, Louisa duchess of Portsmouth, and Mrs. Eleanor Gwyn. We owe a tribute of gratitude to the Mays, the Killigrews, the Chiffinchs, and the Grammonts. They played a serviceable part in ridding the kingdom of its besotted loyalty. They saved our forefathers from the star-chamber and the high-commission court; they laboured in their vocation against standing armies and corruption;

² Clarendon, while he admits these discontents, and complaints of the decay of trade, asserts them to be unfounded. No estate could be put up to sale anywhere but a purchaser was found for it: vol. II. p. 364. The main question, however, is at what rate he would purchase. Rents, he owns, had suddenly fallen 25 per cent., which caused a clamour against taxes, presumed to be the cause of it. But the truth is that wheat, which had been at a very high price for a few years just before and after the restoration, fell about 1663; and there is no doubt that the reign of Charles II. was

not favourable to the landed interest. Lady Sunderland tells us, in a letter of 1681, that "the manor of Worme-Leighton, which, when I was married [1662], was let for 3200*l.*, is now let for 3300*l.*" On the other hand, sir Josiah Child asserts that there were more men on change worth 10,000*l.* in 1680 than there were in 1660 worth 1000*l.*, and that a hundred coaches were kept for one formerly. Lands yielded twenty years' purchase which, when he was young, were not worth above eight or ten. See Macpherson's *Annals of Commerce*, ad A.D. 1660.

they pressed forward the great ultimate security of English freedom, the expulsion of the house of Stuart.

§ 29. Among the ardent loyalists who formed the bulk of the present parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus, round which the lesser factions that circumstances should produce might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. Nothing can more demonstrate the incompatibility of the tory system, which would place the virtual and effective, as well as nominal, administration of the executive government in the sole hands of the crown, with the existence of a representative assembly, than the history of this long parliament of Charles II. None has ever been elected in circumstances so favourable for the crown, none ever brought with it such high notions of prerogative; yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the house of commons matured and extended to those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times; and, as the exercise of these functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable or even fundamental; and were prepared for that more perfect settlement of the constitution on a more republican basis, which took place after the revolution. The reign of Charles II., though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament.

§ 30. The commons took advantage of the pressure which the war with Holland brought on the administration, to establish two very important principles on the basis of their sole right of taxation. The first of these was the appropriation of supplies to limited purposes. In the session of 1665 an enormous supply, as it then appeared, of 1,250,000*l.*, after one of double that amount in the preceding year, having been voted for the Dutch war

sir George Downing, one of the tellers of the exchequer, introduced into the subsidy bill a proviso that the money raised by virtue of that act should be applicable only to the purposes of the war. Clarendon inveighed with fury against this, as an innovation derogatory to the honour of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily by the bankers, in anticipation of the revenue, upon this better security for speedy repayment, insisted that it should not be thrown out. That supplies, granted by parliament, are not only to be expended for particular objects specified by itself, became, from this time, an undisputed principle, recognised by frequent and at length constant practice. It drew with it the necessity of estimates regularly laid before the house of commons; and, by exposing the management of the public revenues, has given to parliament, not only a real and effective control over an essential branch of the executive administration, but, in some measure, rendered them partakers in it.

§ 31. It was a consequence of this right of appropriation that the house of commons should be able to satisfy itself as to the expenditure of their moneys in the services for which they were voted. In the year 1666, the large cost and indifferent success of the Dutch war begetting vehement suspicions, not only of profuseness but of diversion of the public money from its proper purposes, the house appointed a committee to inspect the accounts of the officers of the navy, ordnance, and stores, which were laid before them, as it appears, by the king's direction. This committee, after some time, having been probably found deficient in powers, and particularly being incompetent to administer an oath, the house determined to proceed in a more novel and vigorous manner; and sent up a bill, nominating commissioners to inspect the public accounts, who were to possess full powers of inquiry, and to report with respect to such persons as they should find to have broken their trust. Clarendon opposed the bill, in the house of lords, with much of that intemperate warmth which distinguished him, and with a contempt of the lower house and its authority, as imprudent in respect to his own interests as it was unbecoming and unconstitutional. The king prorogued parliament while the measure was depending; but in hopes to pacify the house of commons, promised to issue a commission under the great seal for the examination of public accountants; an expedient which was not likely to bring more to light than suited his purpose. But it does not appear that this royal commission, though actually prepared and sealed, was ever carried into effect; for in the ensuing session, the great minister's downfall having occurred in the mean time, the house of commons brought forward again their bill, which

passed into a law. It invested the commissioners therein nominated with very extensive and extraordinary powers, both as to auditing public accounts and investigating the frauds that had taken place in the expenditure of money and employment of stores. They were to examine upon oath, to summon inquests if they thought fit, to commit persons disobeying their orders to prison without bail, to determine finally on the charge and discharge of all accountants; the barons of the exchequer, upon a certificate of their judgment, were to issue process for recovering money to the king's use, as if there had been an immediate judgment of their own court. Reports were to be made of the commissioners' proceedings from time to time to the king and to both houses of parliament. None of the commissioners were members of either house. The king, as may be supposed, gave way very reluctantly to this interference with his expenses. It brought to light a great deal of abuse and misapplication of the public revenues, and contributed doubtless in no small degree to destroy the house's confidence in the integrity of government, and to promote a more jealous watchfulness of the king's designs. At the next meeting of parliament, in October, 1669, sir George Carteret, treasurer of the navy, was expelled the house for issuing money without legal warrant.

§ 32. Sir Edward Hyde, whose influence had been almost annihilated in the last years of Charles I. through the inveterate hatred of the queen and those who surrounded her, acquired by degrees the entire confidence of the young king, and baffled all the intrigues of his enemies. Guided by him, in all serious matters, during the latter years of his exile, Charles followed his counsels almost implicitly in the difficult crisis of the restoration. The office of chancellor and the title of earl of Clarendon were the proofs of the king's favour; but in effect, through the indolence and ill health of Southampton, as well as their mutual friendship, he was the real minister of the crown. By the clandestine marriage of his daughter with the duke of York, he changed one brother from an enemy to a sincere and zealous friend, without forfeiting the esteem and favour of the other. And though he was wise enough to dread the invidiousness of such an elevation, yet for several years it by no means seemed to render his influence less secure.

Both in their characters, however, and turn of thinking, there was so little conformity between Clarendon and his master, that the continuance of his ascendancy can only be attributed to the power of early habit over the most thoughtless tempers. But it rarely happens that kings do not ultimately shake off these fetters, and release themselves from the sort of subjection which they feel in acting always by the same advisers. Charles, acute himself and cool-headed, could not fail to discover the passions and prejudices

of his minister, even if he had wanted the suggestion of others who, without reasoning on such broad principles as Clarendon, were perhaps his superiors in judging of temporary business. He wished too, as is common, to depreciate a wisdom, and to suspect a virtue, which seemed to reproach his own vice and folly. Nor had Clarendon spared those remonstrances against the king's course of life which are seldom borne without impatience or resentment. He was strongly suspected by the king as well as his courtiers (though, according to his own account, without any reason) of having promoted the marriage of Miss Stewart with the duke of Richmond. But above all he stood in the way of projects which, though still probably unsettled, were floating in the king's mind. No one was more zealous to uphold the prerogative at a height where it must overtop and chill with its shadow the privileges of the people. No one was more vigilant to limit the functions of parliament, or more desirous to see them confiding and submissive. But there were landmarks which he could never be brought to transgress. He would prepare the road for absolute monarchy, but not introduce it; he would assist to batter down the walls, but not to march into the town. His notions of what the English constitution ought to be appear evidently to have been derived from the times of Elizabeth and James I., to which he frequently refers with approbation. In the history of that age he found much that could not be reconciled to any liberal principles of government. But there were two things which he certainly did not find—a revenue capable of meeting an extraordinary demand without parliamentary supply, and a standing army. Hence he took no pains, if he did not even, as is asserted by Burnet, discourage the proposal of others, to obtain such a fixed annual revenue for the king on the restoration as would have rendered it very rarely necessary to have recourse to parliament, and did not advise the keeping up any part of the army. That a few troops were retained was owing to the duke of York. Nor did he go the length that was expected in procuring the repeal of all the laws that had been enacted in the long parliament.

These omissions sank deep in Charles's heart, especially when he found that he had to deal with an unmanageable house of commons, and must fight the battle for arbitrary power; which might have been achieved, he thought, without a struggle by his minister. There was still less hope of obtaining any concurrence from Clarendon in the king's designs as to religion. Though he does not once hint at it in his writings, there can be little doubt that he must have suspected his master's inclinations towards the church of Rome. The duke of York considered this as the most likely cause of his remissness in not sufficiently advancing the prerogative. He was always opposed to the various schemes of a general indulgence.

towards popery, not only from his strongly protestant principles and his dislike of all toleration, but from a prejudice against the body of the English catholics, whom he thought to arrogate more on the ground of merit than they could elaim. That interest, so powerful at court, was decidedly hostile to the chancellor; for the duke of York, who strictly adhered to him, if he had not kept his change of religion wholly secret, does not seem to have hitherto formed any avowed connexion with the popish party.

§ 33. This estrangement of the king's favour is sufficient to account for Clarendon's loss of power; but his entire ruin was rather accomplished by a strange coalition of enemies, which his virtues, or his errors and infirmities, had brought into union. The cavaliers hated him on account of the act of indemnity, and the presbyterians for that of uniformity. Yet the latter were not in general so eager in his prosecution as the others. But he owed great part of the severity with which he was treated to his own pride and ungovernable passionateness, by which he had rendered very eminent men in the house of commons implacable, and to the language he had used as to the dignity and privileges of the house itself. A sense of this eminent person's great talents as well as general integrity and conscientiousness on the one hand, an indignation at the king's ingratitude and the profligate counsels of those who supplanted him on the other, have led most writers to overlook his faults in administration, and to treat all the articles of accusation against him as frivolous or unsupported. It is doubtless impossible to justify the charge of high treason on which he was impeached; but there are matters that never were or could be disproved; and our own knowledge enables us to add such grave accusations as must show Clarendon's unfitness for the government of a free country.

§ 34. 1. It is the fourth article of his impeachment that he "advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner." This was undoubtedly true. There was some ground for apprehension on the part of the government from those bold spirits who had been accustomed to revolutions, and drew encouragement from the vices of the court and the embarrassments of the nation. Ludow and Algernon Sidney, about the year 1665, had projected an insurrection, the latter soliciting Louis XIV. and the pensionary of Holland for aid. Many officers of the old army, Wildham, Creed, and others, suspected, perhaps justly, of such conspiracies, had been illegally detained in prison for several years, and only recovered their liberty on Clarendon's dismissal. He

and too much encouraged the hateful race of informers, though he admits that it had grown a trade by which men got money, and that many were committed on slight grounds. Thus colonel Hutchinson died in the close confinement of a remote prison, far more probably on account of his share in the death of Charles I., from which the act of indemnity had discharged him, than any just pretext of treason. It was difficult to obtain a habeas corpus from some of the judges in this reign. But to elude that provision by removing men out of the kingdom was such an offence against the constitution as may be thought enough to justify the impeachment of any minister.

2. The first article, and certainly the most momentous, asserts, "that the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." This was prodigiously exaggerated; yet there was some foundation for a part of it. In the disastrous summer of 1667, when the Dutch fleet had insulted our coasts and burned our ships in the Medway, the exchequer being empty, it was proposed in council to call together immediately the parliament, which then stood prorogued to a day at the distance of some months. Clarendon, who feared the hostility of the house of commons towards himself, and had pressed the king to dissolve it, maintained that they could not legally be summoned before the day fixed; and, with a strange inconsistency, attaching more importance to the formalities of law than to its essence, advised that the counties where the troops were quartered should be called upon to send in provisions, and those where there were no troops to contribute money, which should be abated out of the next taxes. And he admits that he might have used the expression of raising contributions, as in the late civil war. This unguarded and unwarrantable language, thrown out at the council-table where some of his enemies were sitting, soon reached the ears of the commons, and, mingled up with the usual misrepresentations of faction, was magnified into a charge of high treason.

3. The eleventh article charged lord Clarendon with having advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, for no greater value than the ammunition, artillery, and stores were worth. The latter part is generally asserted to be false. The sum received is deemed the utmost that Louis would have given, who thought he had made a close bargain. But it is very difficult to reconcile what Clarendon asserts in his defence, and much more at length in his *Life* (that the business of Dunkirk was entirely decided, before he had

thing to do in it, by the advice of Albemarle and Sandwich), with the letters of d'Estrades, the negotiator in this transaction on the part of France. In these letters, written at the time of Louis XIV., Clarendon certainly appears not only as the person chiefly concerned, but as representing himself almost the only one of the council favourable to the measure, and having to overcome the decided repugnance of Southampton, Sandwich, and Albemarle. I cannot indeed see any other explanation than that he magnified the obstacles in the way of this treaty, in order to obtain better terms; a management not very unusual in diplomatical dealing, but, in the degree at least to which he carried it, scarcely reconcilable with the good faith we should expect from this minister. For the transaction itself, we can hardly deem it honourable or politic. The expense of keeping up Dunkirk, though not trifling, would have been willingly defrayed by parliament; and could not well be pleaded by a government which had just encumbered itself with the useless burthen of Tangier. That its possession was of no great direct value to England must be confessed; but it was another question whether it ought to have been surrendered into the hands of France.

4. This close connexion with France is indeed a great reproach to Clarendon's policy, and was the spring of mischiefs to which he contributed, and which he ought to have foreseen. The capital misdemeanour that he committed in this relation with France was the clandestine solicitation of pecuniary aid for the king. He first taught a lavish prince to seek the wages of dependence in a foreign power, to elude the control of parliament by the help of French money. The purpose for which this aid was asked, the succour of Portugal, might be fair and laudable; but the precedent was most base, dangerous, and abominable. A king who had once tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterwards of abstaining from it than a dog from his greasy offal.

§ 35. These are the errors of Clarendon's political life; which, besides his notorious concurrence in all measures of severity and restraint towards the nonconformists, tend to diminish our respect for his memory, and to exclude his name from that list of great and wise ministers where some are willing to place him near the head. If I may seem to my readers less favourable to so eminent a person than common history might warrant, it is at least to be said that I have formed my decision from his own recorded sentiments, or from equally undisputable sources of authority. But the manifest profligacy of those who contributed most to his ruin, and the measures which the court took soon afterwards, have rendered his administration comparatively honourable, and attached veneration

to his memory. We are unwilling to believe that there was anything to censure in a minister whom Buckingham persecuted, and against whom Arlington intrigned.

§ 36. An eminent characteristic of Clarendon had been his firmness, called indeed by most pride and obstinacy, which no circumstances, no perils, seemed likely to bend. But his spirit sunk all at once with his fortune. Clinging too long to office, and cheating himself against all probability with a hope of his master's kindness when he had lost his confidence, he forgot that dignified philosophy which ennobles a voluntary retirement, that stern courage which innocence ought to inspire; and, hearkening to the king's treacherous counsels, fled before his enemies into a foreign country. 'Though the impeachment, at least in the point of high treason, cannot be defended, it is impossible to deny that the act of banishment, under the circumstances of his flight, was capable, in the main, of full justification. In an ordinary criminal suit, a process of outlawry goes against the accused who flies from justice; and his neglect to appear within a given time is equivalent, in cases of treason or felony, to a conviction of the offence; can it be complained of, that a minister of state, who dares not confront a parliamentary impeachment, should be visited with an analogous penalty? But, whatever injustice and violence may be found in this prosecution, it established for ever the right of impeachment, which the discredit into which the long parliament had fallen exposed to some hazard; the strong abettors of prerogative, such as Clarendon himself, being inclined to dispute this responsibility of the king's advisers to parliament. The commons had, in the preceding session, sent up an impeachment against lord Mordaunt, upon charges of so little public moment, that they may be suspected of having chiefly had in view the assertion of this important privilege. It was never called in question from this time; and indeed they took care during the remainder of this reign that it should not again be endangered by a paucity of precedents.

§ 37. The period between the fall of Clarendon in 1667 and the commencement of lord Danby's administration in 1673 is generally reckoned one of the most disgraceful in the annals of our monarchy. This was the age of what is usually denominated the Cabal administration, from the five initial letters of sir Thomas Clifford, first commissioner of the treasury, afterwards lord Clifford and high treasurer; the earl of Arlington, secretary of state; the duke of Buckingham; lord Ashley, chancellor of the exchequer, afterwards earl of Shaftesbury and lord chancellor; and, lastly, the duke of Lauderdale. Yet, though the counsels of these persons soon became extremely pernicious and dishonourable, it must be admitted that the first measures after the banishment of Clarendon, both in

domestic and foreign policy, were highly praiseworthy Bridgeman, who succeeded the late chancellor in the custody of the great seal, with the assistance of chief baron Hale and bishop Wilkins, and at the instigation of Buckingham, who, careless about every religion, was from humanity or politic motives friendly to the indulgence of all, laid the foundations of a treaty with the nonconformists, on the basis of a comprehension for the presbyterians, and a toleration for the rest. They had nearly come, it is said, to terms of agreement, so that it was thought time to intimate their design in a speech from the throne. But the spirit of 1662 was still too powerful in the commons; and the friends of Clarendon, whose administration this change of counsels seemed to reproach, taking a warm part against all indulgence, a motion, that the king be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his protestant subjects, was negatived by 176 to 70. They proceeded, by almost an equal majority, to continue the bill of 1664, for suppressing seditious conventicles; which failed, however, for the present, in consequence of the sudden prorogation.

§ 38. But whatever difference of opinion might at that time prevail with respect to this tolerant disposition of the new government, there was none as to their great measure in external policy, the triple alliance with Holland and Sweden. A considerable and pretty sudden change had taken place in the temper of the English people towards France. The national prejudices, from the accession of Elizabeth to the restoration, ran far more against Spain; and it is not surprising that the apprehensions of that ambitious monarchy, which had been very just in the age of Philip II., should have lasted longer than its ability or inclination to molest us. But the rapid declension of Spain after the peace of the Pyrenees, and the towering ambition of Louis XIV., master of a kingdom intrinsically so much more formidable than its rival, manifested that the balance of power in Europe, and our own immediate security, demanded a steady opposition to the aggrandisement of one monarchy, and a regard to the preservation of the other. These indeed were rather considerations for statesmen than for the people; but Louis was become unpopular both by his acquisition of Dunkirk at the expense, as it was thought, of our honour, and much more deservedly by his shuffling conduct in the Dutch war, and union in it with our adversaries. Nothing, therefore, gave greater satisfaction in England than the triple alliance, and consequent peace of Aix la Chapelle, which saved the Spanish Netherlands from absolute conquest, though not without important sacrifices.

§ 39. Charles himself meanwhile by no means partook in this common jealousy of France. He had, from the time of his restora-

tion, entered into close relations with that power, which a short period of hostility had interrupted without leaving any resentment in his mind. It is now known that, while his minister was negotiating at the Hague for the triple alliance, he had made overtures for a clandestine treaty with Louis, through his sister the duchess of Orleans, the duke of Buckingham, and the French ambassador Rouvigny.

Charles II. was not of a temperament to desire arbitrary power, either through haughtiness and conceit of his station, which he did not greatly display, or through the love of taking into his own hands the direction of public affairs, about which he was in general pretty indifferent. He did not wish, as he told Lord Essex, to sit like a Turkish sultan, and sentence men to the lowstring, but could not bear that a set of fellows should inquire into his conduct. His aim, in fact, was liberty rather than power; it was that immunity from control and censure in which men of his character place a great part of their happiness. For some years he had cared probably very little about enhancing his prerogative, content with the loyalty, though not quite with the liberality, of his parliament. And had he not been drawn, against his better judgment, into the war with Holland, this harmony might perhaps have been protracted a good deal longer. But the vast expenditure of that war, producing little or no decisive success, and coming unfortunately at a time when trade was not very thriving, and when rents had considerably fallen, exasperated all men against the prodigality of the court, to which they might justly ascribe part of their burthens, and, with the usual miscalculations, believed that much more of them was due. Hence the bill appointing commissioners of public account, so ungrateful to the king, whose personal reputation it was likely to affect, and whose favourite excesses it might tend to restrain.

He was almost equally provoked by the licence of his people's tongues. A court like that of Charles is the natural topic of the idle, as well as the censorious. An administration so ill conducted could not escape the remarks of a well-conducted and intelligent city. Those who stood nearest to the king were not backward to imitate his discontent at the privileges of his people and their representatives. The language of courtiers and court ladies is always intolerable to honest men, especially that of such courtiers as surrounded the throne of Charles II. It is worst of all amidst public calamities, such as pressed very closely on one another in a part of his reign—the awful pestilence of 1665, the still more ruinous fire of 1666, the fleet burned by the Dutch in the Medway next summer. No one could reproach the king for outward inactivity or indifference during the great fire. But there were some, as

Clarendon tells us, who presumed to assure him "that this was the greatest blessing that God had ever conferred on him, his restoration only excepted; for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought it necessary for his service, there being no other way to govern that rude multitude but by force." It seems probable that this loose and profligate way of speaking gave rise, in a great degree, to the suspicion that the city had been purposely burned by those who were more enemies to religion and liberty than to the court. The papists stood ready to bear the infamy of every unproved crime; and a committee of the house of commons collected evidence enough for those who were already convinced that London had been burned by that obnoxious sect.

The retention of the king's guards had excited some jealousy, though no complaints seem to have been made of it in parliament; but the sudden levy of a considerable force in 1667, however founded upon a very plausible pretext from the circumstances of the war, lending credit to these dark surmises of the court's sinister designs, gave much greater alarm. The commons, summoned together in July, instantly addressed the king to disband his army as soon as the peace should be made.

This change in public sentiment gave warning to Charles that he could not expect to reign with as little trouble as he had hitherto experienced; and doubtless the recollection of his father's history did not contribute to cherish the love he sometimes pretended for parliaments. His brother, more reflecting, and more impatient of restraint on royal authority, saw with still greater clearness than the king that they could only keep the prerogative at its desired height by means of intimidation. A regular army was indispensable; but to keep up an army in spite of parliament, or to raise money for its support without parliament, was a very difficult undertaking. It seemed necessary to call in a more powerful arm than their own; and, by establishing the closest union with the king of France, to obtain either military or pecuniary succours from him, as circumstances might demand. But there was another and not less imperious motive for a secret treaty. The king, as has been said, though little likely, from the tenor of his life, to feel very strong and lasting impressions of religion, had at times a desire to testify publicly his adherence to the Romish communion. The duke of York had come more gradually to change the faith in which he was educated. He describes it as the result of patient and anxious inquiry; nor would it be possible therefore to fix a precise date for

his conversion, which seems to have been not fully accomplished till after the restoration. He however continued in conformity to the church of England, till, on discovering that the catholic religion exacted an outward communion, which he had fancied not indispensable, he became more uneasy at the restraint that policy imposed on him. This led to a conversation with the king, and to a close union with Clifford and Arlington, from whom he had stood aloof on account of their animosity against Clarendon. The king and duke held a consultation with those two ministers, and with lord Arundel of Wardour, on the 25th of January, 1669, to discuss the ways and methods fit to be taken for the advancement of the catholic religion in these kingdoms. The king spoke earnestly, and with tears in his eyes. After a long deliberation it was agreed that there was no better way to accomplish this purpose than through France, the house of Austria being in no condition to give any assistance.

§ 40. The famous secret treaty, which, though believed on pretty good evidence not long after the time, was first actually brought to light by Dalrymple about half a century since, began to be negotiated very soon after this consultation. In one of his letters to the duchess of Orleans, dated June 6, 1669, the methods the king was adopting to secure himself in this perilous juncture appear. He was to fortify Plymouth, Hull, and Portsmouth, and to place them in trusty hands. The fleet was under the duke, as lord admiral; the guards and their officers were thought in general well affected; but his great reliance was on the most christian king. He stipulated for 200,000*l.* annually, and for the aid of 6000 French troops. In return for such important succour, Charles undertook to serve his ally's ambition and wounded pride against the United Provinces. These, when conquered by the French arms, with the co-operation of an English navy, were already shared by the royal conspirators. A part of Zealand fell to the lot of England, the remainder of the Seven Provinces to France, with an understanding that some compensation should be made to the prince of Orange. In the event of any new rights to the Spanish monarchy accruing to the most christian king, as it is worded (that is, on the death of the king of Spain, a sickly child), it was agreed that England should assist him with all her force by sea and land, but at his own expense; and should obtain not only Ostend and Minorea, but, as far as the king of France could contribute to it, such parts of Spanish America as she should choose to conquer. So strange a scheme of partitioning that vast inheritance was never, I believe, suspected till the publication of the treaty.

§ 41. Each conspirator, in his coalition against the protestant faith and liberties of Europe, had splendid objects in view; but

those of Louis seemed by far the more probable of the two and less liable to be defeated. The full completion of their scheme would have reunited a great kingdom to the catholic religion, and turned a powerful neighbour into a dependent pensioner. But should this fail (and Louis was too sagacious not to discern the chances of failure), he had pledged to him the assistance of an ally in subjugating the republic of Holland, which, according to all human calculation, could not withstand their united efforts. Charles, on the other hand, besides that he had no other return to make for the necessary protection of France, was impelled by a personal hatred of the Dutch, and by the consciousness that their commonwealth was the standing reproach of arbitrary power, to join readily in the plan for its subversion. But, looking first to his own objects, and perhaps a little distrustful of his ally, he pressed that his profession of the Roman catholic religion should be the first measure in prosecution of the treaty; and that he should immediately receive the stipulated 200,000*l.*, or at least a part of the money. Louis insisted that the declaration of war against Holland should precede. This difference occasioned a considerable delay; and it was chiefly with a view of bringing round her brother on this point that the duchess of Orleans took her famous journey to Dover in the spring of 1670. Yet, notwithstanding her influence, which passed for irresistible, he persisted in adhering to the right reserved to him in the draft of the treaty of choosing his own time for the declaration of his religion; and it was concluded on this footing at Dover, by Clifford, Arundel, and Arlington, on the 22nd of May, 1670, during the visit of the duchess of Orleans.

A mutual distrust, however, retarded the further progress of this scheme, one party unwilling to commit himself till he should receive money, the other too cautious to run the risk of throwing it away. There can be no question but that the king of France was right in urging the conquest of Holland as a preliminary of the more delicate business they were to manage in England; and, from Charles's subsequent behaviour, as well as his general fickleness and love of ease, there seems reason to believe that he would gladly have receded from an undertaking of which he must every day have more strongly perceived the difficulties. He confessed, in fact, to Louis's ambassador, that he was almost the only man in his kingdom who liked a French alliance. The change of religion, on a nearer view, appeared dangerous for himself and impracticable as a national measure. He had not dared to intrust any of his protestant ministers, even Buckingham, whose indifference in such points was notorious, with this great secret; and, to keep them the better in the dark, a mock negotiation was set on foot with France, and a pretended treaty actually signed, the exact counterpart of the

other except as to religion. Buckingham, Shaftesbury, and Lauderdale were concerned in this simulated treaty, the negotiation for which did not commence till after the original convention had been signed at Dover.

The court of France, having yielded to Charles the point about which he had seemed so anxious, had soon the mortification to discover that he would take no steps to effect it. They now urged that immediate declaration of his religion which they had for very wise reasons not long before dissuaded. The king of England hung back, and tried so many excuses that they had reason to suspect his sincerity; not that in fact he had played a feigned part from the beginning, but, his zeal for popery having given way to the seductions of a voluptuous and indolent life, he had been led, with the good sense he naturally possessed, to form a better estimate of his resources and of the opposition he must encounter. Meanwhile the eagerness of his ministers had plunged the nation into war with Holland, and Louis, having attained his principal end, ceased to trouble the king on the subject of religion. He received large sums from France during the Dutch war.

This memorable transaction explains and justifies the strenuous opposition made in parliament to the king and duke of York, and may be reckoned the first act of a drama which ended in the revolution. It is true that the precise terms of this treaty were not authentically known: but there can be no doubt that those who from this time displayed an insuperable jealousy of one brother, and a determined enmity to the other, had proofs enough for moral conviction of their deep conspiracy with France against religion and liberty. This suspicion is implied in all the conduct of that parliamentary opposition, and is the apology of much that seems violence and faction, especially in the business of the popish plot and the bill of exclusion. It is of importance also to observe that James II. was not misled and betrayed by false or foolish counsellors, as some would suggest, in his endeavours to subvert the laws, but acted on a plan long since concerted and in which he had taken a principal share.

It must be admitted that neither in the treaty itself, nor in the few letters which have been published by Dalrymple, do we find any explicit declaration either that the catholic religion was to be established as the national church, or arbitrary power introduced in England. But there are not wanting strong presumptions of this design. The king speaks, in a letter to his sister, of finding means to put the proprietors of church lands out of apprehension. He uses the expression, "*rétablir la religion catholique*;" which, though not quite unequivocal, seems to convey more than a bare toleration or a personal profession by the sovereign. He talks of

a secure majority on any important question. The superiority of what was called the country party is referred to the session of February, 1673, in which they compelled the king to recall his proclamation suspending the penal laws, and raised a barrier against the encroachments of popery in the test act.

§ 44. The king's declaration of indulgence had been projected by Shaftesbury in order to conciliate or lull to sleep the protestant dissenters. It redounded, in its immediate effect, chiefly to their benefit; the catholics already enjoying a connivance at the private exercise of their religion, and the declaration expressly refusing them public places of worship. The plan was most laudable in itself, could we separate the motives which prompted it, and the means by which it was pretended to be made effectual. But in the declaration the king says, "We think ourselves obliged to make use of that supreme power in ecclesiastical matters which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of parliament." "We do," he says, not long afterwards, "declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of nonconformists or recusants, be immediately suspended, and they are hereby suspended." He mentions also his intention to license a certain number of places for the religious worship of nonconforming protestants.

It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favour of particular persons, and under certain restrictions. It was undeniable that the king might, by what is called a "noli prosequi," stop any criminal prosecution commenced in his courts, though not an action for the recovery of a pecuniary penalty, which, by many statutes, was given to the common informer. He might, of course, set at liberty, by means of a pardon, any person imprisoned, whether upon conviction or by a magistrate's warrant. Thus the operation of penal statutes in religion might, in a great measure, be rendered ineffectual by an exercise of undisputed prerogatives; and thus, in fact, the catholics had been enabled, since the accession of the house of Stuart, to withstand the crushing severity of the laws. But a pretension, in explicit terms, to suspend a body of statutes, a command to magistrates not to put them in execution, arrogated a sort of absolute power which no benefits of the indulgence itself (had they even been less insidiously offered) could induce a lover of constitutional privileges to endure.⁵ Notwithstanding the affected distinction of temporal and ecclesiastical matters, it was evident that

⁵ Bridgeman, the lord keeper, resigned the great seal, according to Burnet, because he would not put it to the declaration of indulgence, and was succeeded by Shaftesbury.

the king's supremacy was as much capable of being bounded by the legislature in one as in the other, and that every law in the statute-book might be repealed by a similar proclamation. The house of commons voted that the king's prerogative in matters ecclesiastical does not extend to repeal acts of parliament, and addressed the king to recall his declaration. The king, in his answer to this address, lamented that the house should question his ecclesiastical power, which had never been done before. This brought on a fresh rebuke, and, in a second address, they positively deny the king's right to suspend any law. "The legislative power," they say, "has always been acknowledged to reside in the king and two houses of parliament. The king, in a speech to the house of lords, complained much of the opposition made by the commons, and found a majority of the former disposed to support him, though both houses concurred in an address against the growth of popery. At length, against the advice of the bolder part of his council, but certainly with a just sense of what he most valued, his ease of mind, Charles gave way to the public voice, and withdrew his declaration.

§ 45. The act of supremacy in the first year of Elizabeth had imposed on all accepting temporal as well as ecclesiastical offices an oath denying the spiritual jurisdiction of the pope. But though the refusal of this oath when tendered incurred various penalties, yet it does not appear that any were attached to its neglect, or that the oath was a previous qualification for the enjoyment of office, as it was made by a subsequent act of the same reign for sitting in the house of commons. It was found also by experience that persons attached to the Roman doctrine sometimes made use of strained constructions to reconcile the oath of supremacy to their faith. Nor could that test be offered to peers, who were excepted by a special provision. For these several reasons a more effectual security against popish counsellors, at least in notorious power, was created by the famous test act of 1673, which renders the reception of the sacrament according to the rites of the church of England, and a declaration renouncing the doctrine of transubstantiation, preliminary conditions without which no temporal office of trust can be enjoyed. In this fundamental article of faith no compromise or equivocation would be admitted by any member of the church of Rome. And, as the obligation extended to the highest ranks, this reached the end for which it was immediately designed; compelling not only the lord-treasurer Clifford, the boldest and most dangerous of that party, to retire from public business, but the duke of York himself, whose desertion of the protestant church was hitherto not absolutely undisguised, to quit the post of lord-admiral.

It is evident that a test might have been framed to exclude the Roman catholic as effectually as the present without bearing like

invincible majority for the court, ready to frustrate any legislative security for public liberty. Thus the habeas corpus act, first sent up to that house in 1674, was lost there in several successive sessions. The commons, therefore, testified their sense of public grievances, and kept alive an alarm in the nation, by resolutions and addresses, which a phlegmatic reader is sometimes too apt to consider as factious or unnecessary. If they seem to have dwelt more, in some of these, on the dangers of religion, and less on those of liberty, than we may now think reasonable, it is to be remembered that the fear of popery has always been the surest string to touch for effect on the people; and that the general clamour against that religion was all covertly directed against the duke of York, the most dangerous enemy of every part of our constitution. The real vice of this parliament was not intemperance, but corruption. Clifford, and still more Danby, were masters in an art practised by ministers from the time of James I. (and which indeed can never be unknown where there exists a court and a popular assembly), that of turning to their use the weapons of mercenary eloquence by office, or blunting their edge by bribery. Some who had been once prominent in opposition, as sir Robert Howard and sir Richard Temple, became placemen; some, like Garraway and sir Thomas Lee, while they continued to lead the country party, took money from the court for softening particular votes; many, as seems to have been the case with Reresby, were won by promises and the pretended friendship of men in power. On two great classes of questions, France and popery, the commons broke away from all management; nor was Danby unwilling to let his master see their indocility on these subjects. But in general, till the year 1678, by dint of the means before mentioned, and partly no doubt through the honest conviction of many that the king was not likely to employ any minister more favourable to the protestant religion and liberties of Europe, he kept his ground without any insuperable opposition from parliament.

§ 3. The earl of Danby had virtues as an English minister, which served to extenuate some great errors and an entire want of scrupulousness in his conduct. Zealous against the church of Rome and the aggrandisement of France, he counteracted, while he seemed to yield to, the prepossessions of his master. If the policy of England before the peace of Nimeguen was mischievous and disgraceful, it would evidently have been far more so had the king and duke of York been abetted by this minister in their fatal predilection for France. We owe to Danby's influence, it must ever be remembered, the marriage of princess Mary to the prince of Orange, the seed of the revolution and the act of settlement—a courageous and disinterested counsel, which ought not to have proved the source of

his greatest misfortunes. But we cannot pretend to say that he was altogether as sound a friend to the constitution of his country as to her national dignity and interests. I do not mean that he wished to render the king absolute. But a minister, harassed and attacked in parliament, is tempted to desire the means of crushing his opponents, or at least of augmenting his own sway. The mischievous bill that passed the house of lords in 1675, imposing as a test to be taken by both houses of parliament, as well as all holding beneficed offices, a declaration that resistance to persons commissioned by the king was in all cases unlawful, and that they would never attempt any alteration in the government in church or state, was promoted by Danby, though it might possibly originate with others. It was apparently meant as a bone of contention among the country party, in which presbyterians and old parliamentarians were associated with discontented cavaliers. Besides the mischief of weakening this party, which indeed the minister could not fairly be expected to feel, nothing could have been devised more unconstitutional, or more advantageous to the court's projects of arbitrary power.

It is certainly possible that a minister who, aware of the dangerous intentions of his sovereign or his colleagues, remains in the cabinet to thwart and countermine them, may serve the public more effectually than by retiring from office; but he will scarcely succeed in avoiding some material sacrifices of integrity, and still less of reputation. Danby, the ostensible adviser of Charles II., took on himself the just odium of that hollow and suspicious policy which appeared to the world. We know indeed that he was concerned, against his own judgment, in the king's secret receipt of money from France, the price of neutrality, both in 1676 and in 1678, the latter to his own ruin. Could the opposition, though not so well apprized of these transactions as we are, be censured for giving little credit to his assurances of zeal against that power; which, though sincere in him, were so little in unison with the disposition of the court? Had they no cause to dread that the great army suddenly raised in 1677, on pretence of being employed against France, might be turned to some worse purposes more congenial to the king's temper?

§ 4. This invincible distrust of the court is the best apology for that which has given rise to so much censure, the secret connections formed by the leaders of opposition with Louis XIV., through his ambassadors Barillon and Rouvigny, about the spring of 1678. They well knew that the king's designs against their liberties had been planned in concert with France, and could hardly be rendered effectual without her aid in money, if not in arms. If they could draw over this dangerous ally from his side, and convince the king

one, of such as were in actual communication with himself; another, of such as sir John Baber, a secret agent, had prevailed upon to accept it. Sidney was in the first class; but as to the second, comprehending Littleton, Hampden, Sacheverell, in whom it is, for different reasons, as difficult to suspect pecuniary corruption as in him, the proof is manifestly weaker, depending only on the assertion of an intriguer that he had paid them the money. The falsehood either of Baber or Barillon would acquit these considerable men. Nor is it to be reckoned improbable that persons employed in this clandestine service should be guilty of a fraud, for which they could evidently never be made responsible. We have indeed a remarkable confession of Coleman, the famous intriguer executed for the popish plot, to this effect. He deposed in his examination before the house of commons, in November, 1678, that he had received last session of Barillon 2500*l.* to be distributed among members of parliament, which he had converted to his own use. It is doubtless possible that Coleman, having actually expended this money in the manner intended, bespoke the favour of those whose secret he kept by taking the discredit of such a fraud on himself. But it is also possible that he spoke the truth. A similar uncertainty hangs over the transactions of sir John Baber. Nothing in the parliamentary conduct of the above-mentioned gentleman in 1680 corroborates the suspicion of an intrigue with France, whatever may have been the case in 1678.

I must fairly confess, however, that the decided bias of my own mind is on the affirmative side of this question; and that principally because I am not so much struck as some have been by any violent improbability in what Barillon wrote to his court on the subject. If indeed we were to read that Algernon Sidney had been bought over by Louis XIV. or Charles II. to assist in setting up absolute monarchy in England, we might fairly oppose our knowledge of his inflexible and haughty character, of his zeal, in life and death, for republican liberty. But there is, I presume, some moral distinction between the acceptance of a bribe to desert or betray our principles, and that of a trifling present for acting in conformity to them. The one is, of course, to be styled corruption; the other is repugnant to a generous and delicate mind, but too much sanctioned by the practice of an age far less scrupulous than our own, to have carried with it any great self-reproach or sense of degradation. It is truly inconceivable that men of such property as sir Thomas Littleton or Mr. Foley should have accepted 300 or 500 guineas, the sums mentioned by Barillon, as the price of apostasy from those political principles to which they owed the esteem of their country, or of an implicit compliance with the dictates of France. It is sufficiently discreditable to the times in

which they lived that they should have accepted so pitiful a gratuity; unless indeed we should in candour resort to an hypothesis which seems not absurd, that they agreed among themselves not to offend Louis, or excite his distrust, by a refusal of this money. Sidney indeed was, as there is reason to think, a distressed man; he had formerly been in connection with the court of France, and had persuaded himself that the countenance of that power might one day or other be afforded to his darling scheme of a commonwealth; he had contracted a dislike to the prince of Orange, and consequently to the Dutch alliance, from the same governing motive: is it strange that one so circumstanced should have accepted a small gratification from the king of France which implied no dereliction of his duty as an Englishman, or any sacrifice of political integrity? And I should be glad to be informed by the idolaters of Algernon Sidney's name, what we know of him from authentic and contemporary sources which renders this incredible.

§ 6. France, in the whole course of these intrigues, held the game in her hands. Mistress of both parties, she might either embarrass the king through parliament, if he pretended to an independent course of policy, or cast away the latter when he should return to his former engagements. Hence, as early as May, 1678, a private treaty was set on foot between Charles and Louis, by which the former obliged himself to keep a neutrality, if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband most of his army, and not to assemble his parliament for six months: in return he was to receive 6,000,000 livres. This was signed by the king himself on May 27; none of his ministers venturing to affix their names. Yet at this time he was making outward professions of an intention to carry on the war. Even in this secret treaty, so thorough was his insincerity, he meant to evade one of its articles, that of disbanding his troops. In this alone he was really opposed to the wishes of France; and her pertinacity in disarming him seems to have been the chief source of those capricious changes of his disposition which we find for three or four years at this period.¹ Louis again appears not only to have mistrusted the king's own inclinations after the prince of Orange's marriage, and his ability to withstand the eagerness of the nation for war, but to have apprehended that he might become absolute by means of his army, without standing indebted for it to his ancient ally. In this point therefore he faithfully served the popular party. Charles used every endeavour to evade this con-

¹ His exclamation at Barillon's pressing the reduction of the army to 8000 men is well known. "God's fish! are all the king of France's promises to make me

master of my subjects come to this? or does he think that a matter to be done with 8000 men?"

dition ; whether it were that he still entertained hopes of obtaining arbitrary power through intimidation, or that, dreading the violence of the house of commons, and ascribing it rather to a republican conspiracy than to his own misconduct, he looked to a military force as his security. From this motive we may account for his strange proposal to the French king of a league in support of Sweden, by which he was to furnish fifteen ships and 10,000 men, at the expense of France, during three years, receiving six millions for the first year, and four for each of the two next. Louis, as is highly probable, betrayed this project to the Dutch government, and thus frightened them into that hasty signature of the treaty of Nimeguen, which broke up the confederacy, and accomplished the immediate objects of his ambition. No longer in need of the court of England, he determined to punish it for that duplicity which none resent more in others than those who are accustomed to practise it. He refused Charles the pension stipulated by the private treaty, alleging that its conditions had not been performed ; and urged on Montagu, with promises of indemnification, to betray as much as he knew of that secret, in order to ruin lord Danby.

§ 7. The ultimate cause of this minister's fall may thus be deduced from the best action of his life ; though it ensued immediately from his very culpable weakness in aiding the king's inclinations towards a sordid bargaining with France. It is well known that the famous letter to Montagu, empowering him to make an offer of neutrality for the price of 6,000,000 livres, was not only written by the king's express order, but that Charles attested this with his own signature in a postscript. This bears date five days after an act had absolutely passed to raise money for carrying on the war ; a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozenner as filled the throne. But, as he was beyond their reach, they exercised a constitutional right in the impeachment of his responsible minister. For responsible he surely was ; though, strangely mistaking the obligations of an English statesman, Danby seems to fancy in his printed defence that the king's order would be sufficient warrant to justify obedience in any case not literally unlawful. The letter to Montagu, he asserts, " was written by the king's command, upon the subject of peace and war, wherein his majesty alone is at all times sole judge, and ought to be obeyed not only by any of his ministers of state but by all his subjects." Such were, in that age, the monarchical or tory maxims of government, which the impeachment of this minister contributed in some measure to overthrow.

As the king's authority for the letter to Montagu was an undeniable fact, evidenced by his own handwriting, the commons in impeaching lord Danby went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is considered, in the modern theory of the constitution, answerable for the justice, the honesty, the utility of all measures emanating from the crown, as well as for their legality; and thus the executive administration is rendered subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of parliament. It must at the same time be admitted that, through the heat of honest indignation and some less worthy passions on the one hand, through uncertain and crude principles of constitutional law on the other, this just and necessary impeachment of the earl of Danby was not so conducted as to be exempt from all reproach. The charge of high treason for an offence manifestly amounting only to misdemeanor, with the purpose, not perhaps of taking the life of the accused, but at least of procuring some punishment beyond the law, with the strange mixture of articles, as to which there was no presumptive proof, or which were evidently false, such as concealment of the popish plot, gave such a character of intemperance and faction to these proceedings as may lead superficial readers to condemn them altogether. The compliance of Danby with the king's corrupt policy had been highly culpable, but it was not unprecedented; it was even conformable to the court standard of duty; and as it sprang from too inordinate a desire to retain power, it would have found an appropriate and adequate chastisement in exclusion from office. We judge perhaps somewhat more favourably of lord Danby than his contemporaries at that juncture were warranted to do; but even then he was rather a minister to be pulled down than a man to be severely punished. His one great and undeniable service to the protestant and English interests should have palliated a multitude of errors. Yet this was the mainspring and first source of the intrigue that ruined him.

§ 8. The impeachment of lord Danby brought forward several material discussions on that part of our constitutional law which should not be passed over in this place. 1. As soon as the charges presented by the commons at the bar of the upper house had been read, a motion was made that the earl should withdraw; and another afterwards that he should be committed to the Tower; both of which were negatived by considerable majorities. This refusal to commit on a charge of treason had created a dispute between the two houses in the instance of lord Clarendon. In that case, however, one of the articles of impeachment did actually contain an unquestionable treason. But it was contended with much

more force on the present occasion, that if the commons, by merely using the word traitorously, could alter the character of offences which, on their own showing, amounted but to misdemeanors, the boasted certainty of the law in matters of treason would be at an end; and unless it were meant that the lords should pass sentence in such a case against the received rules of law, there could be no pretext for their refusing to admit the accused to bail. The house of commons, however, may be considered as having carried their point; for, though the prorogation and subsequent dissolution of the present parliament ensued so quickly that nothing more was done in the matter, yet, when the next house of commons revived the impeachment, the lords voted to take Danby into custody without any further objection. It ought not to be inferred from hence that they were wrong in refusing to commit; nor do I conceive, notwithstanding the later precedent of lord Oxford, that any rule to the contrary is established. In any future case it ought to be open to debate whether articles of impeachment pretending to contain a charge of high treason do substantially set forth overt acts of such a crime; and if the house of lords shall be of opinion, either by consulting the judges or otherwise, that no treason is specially alleged, they should, notwithstanding any technical words, treat the offence as a misdemeanor, and admit the accused to bail.

§ 9.—2. A still more important question arose as to the king's right of pardon upon a parliamentary impeachment. Danby, who had absconded on the unexpected revival of these proceedings in the new parliament, finding that an act of attainder was likely to pass against him in consequence of his flight from justice, surrendered himself to the usher of the black rod; and, on being required to give in his written answer to the charges of the commons, pleaded a pardon secretly obtained from the king, in bar of the prosecution. The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England. They demanded judgment at the lords' bar against Danby, as having put in a void plea. They resolved, with that culpable violence which distinguished this and the succeeding house of commons, in order to deprive the accused of the assistance of counsel, that no commoner whatsoever should presume to maintain the validity of the pardon pleaded by the earl of Danby, without their consent, on pain of being accounted a betrayer of the liberties of the commons of England. They denied the right of the bishops to vote on the validity of this pardon. They demanded the appointment of a committee from both houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot. The upper house gave some signs of a vacillating

and temporising spirit, not by any means unaccountable. They acceded, after a first refusal, to the proposition of a committee, though manifestly designed to encroach on their own exclusive claim of judicature. But they came to a resolution that the spiritual lords had a right to sit and vote in parliament in capital cases, until judgment of death shall be pronounced. The commons of course protested against this vote; but a prorogation soon dropped the curtain over their differences; and Danby's impeachment was not acted upon in the next parliament.

§ 10. There seems to be no kind of pretence for objecting to the votes of the bishops on such preliminary questions as may arise in an impeachment of treason. It is true that ancient custom has so far engrafted the provisions of the ecclesiastical law on our constitution that they are bound to withdraw when judgment of life or death is pronounced; though even in this they always did it with a protestation of their right to remain. This, once claimed as a privilege of the church, and reluctantly admitted by the state, became, in the lapse of ages, an exclusion and a badge of inferiority. In the constitutions of Clarendon under Henry II. it is enacted, that the bishops and others holding spiritual benefices, "in capite" should give their attendance at trials in parliament till it come to sentence of life or member. This, although perhaps too ancient to have authority as statute law, was a sufficient evidence of the constitutional usage, where nothing so material could be alleged on the other side. And, as the original privilege was built upon nothing better than the narrow superstitions of the canon law, there was no reasonable pretext for carrying the exclusion of the spiritual lords farther than certain and constant precedents required. Though it was true, as the enemies of lord Danby urged, that by voting for the validity of his pardon they would in effect determine the whole question in his favour, yet there seemed no serious reason, considering it abstractedly from party views, why they should not thus indirectly be restored for once to a privilege from which the prejudices of former ages alone had shut them out.

The main point in controversy, whether a general or special pardon from the king could be pleaded in answer to an impeachment of the commons, so as to prevent any further proceedings in it, never came to a regular decision. It was evident that a minister who had influence enough to obtain such an indemnity might set both houses of parliament at defiance; the pretended responsibility of the crown's advisers, accounted the palladium of our constitution, would be an idle mockery if not only punishment could be averted but inquiry frustrated. Even if the king could remit the penalties of a guilty minister's sentence upon impeachment, it would be much that public indignation should have been excited against him, that

suspicion should have been turned into proof, that shame and reproach, irremissible by the great seal, should avenge the wrongs of his country. It was always to be presumed that a sovereign, undeceived by such a judicial inquiry, or sensible to the general voice it roused, would voluntarily, or at least prudently, abandon an unworthy favourite. Though it might be admitted that long usage had established the royal prerogative of granting pardons under the great seal, even before trial, and that such pardons might be pleaded in bar (a prerogative indeed which ancient statutes, not repealed, though gone into disuse, or rather in no time acted upon, had attempted to restrain), yet we could not infer that it extended to cases of impeachment. In ordinary criminal proceedings by indictment the king was before the court as prosecutor, the suit was in his name; he might stay the process at his pleasure by entering a "nolle prosequi;" to pardon, before or after judgment, was a branch of the same prerogative; it was a great constitutional trust, to be exercised at his discretion. But in an appeal, that is, an accusation of felony, brought by the injured party or his next of blood, a proceeding wherein the king's name did not appear, it was undoubted that he could not remit the capital sentence. The same principle seemed applicable to an impeachment at the suit of the commons of England, demanding justice from the supreme tribunal of the other house of parliament. It could not be denied that James had remitted the whole sentence upon lord Bacon. But impeachments were so unusual at that time, and the privileges of parliament so little out of dispute, that no great stress could be laid on this precedent.

Such must have been the course of arguing, strong on political and specious on legal grounds, which induced the commons to resist the plea put in by lord Danby. Though this question remained in suspense on the present occasion, it was finally decided by the legislature in the act of settlement, which provides that no pardon under the great seal of England be pleadable to an impeachment of the commons in parliament. These expressions seem tacitly to concede the crown's right of granting a pardon after sentence, which, though perhaps it could not well be distinguished in point of law from a pardon pleadable in bar, stands on a very different footing, as has been observed above, with respect to constitutional policy. Accordingly, upon the impeachment of the six peers who had been concerned in the rebellion of 1715, the house of lords, after sentence passed, having come to a resolution on debate that the king had a right to reprove in cases of impeachment, addressed him to exercise that prerogative as to such of them as should deserve his mercy; and three of the number were in consequence pardoned.

§ 11.—3. The impeachment of Danby first brought forward another question of hardly less magnitude, and remarkable as one of the few great points in constitutional law which have been discussed and finally settled within the memory of the present generation: I mean the continuance of an impeachment by the commons from one parliament to another. Though this has been put at rest by a determination altogether consonant to maxims of expediency, it seems proper in this place to show briefly the grounds upon which the argument on both sides rested.

In the earlier period of our parliamentary records the business of both houses, whether of a legislative or judicial nature, though often very multifarious, was despatched with the rapidity natural to comparatively rude times, by men impatient of delay, unused to doubt, and not cautious in the proof of facts or attentive to the subtleties of reasoning. The session, generally speaking, was not to terminate till the petitions in parliament for redress had been disposed of, whether decisively or by reference to some more permanent tribunal. Petitions for alteration of the law, presented by the commons and assented to by the lords, were drawn up into statutes by the king's council just before the prorogation or dissolution. They fell naturally to the ground if the session closed before they could be submitted to the king's pleasure. The great change that took place in the reign of Henry VI., by passing bills complete in their form through the two houses instead of petitions, while it rendered manifest to every eye that distinction between legislative and judicial proceedings which the simplicity of olden times had half concealed, did not affect this constitutional principle. At the close of a session every bill then in progress through parliament became a nullity, and must pass again through all its stages before it could be tendered for the royal assent. No sort of difference existed in the effect of a prorogation and a dissolution; it was even maintained that a session made a parliament.

During the fifteenth and sixteenth centuries writs of error from inferior courts to the house of lords became far less usual than in the preceding age; and when they occurred, as error could only be assigned on a point of law appearing on the record, they were quickly decided with the assistance of the judges. But, when they grew more frequent, and especially when appeals from the chancellor, requiring often a tedious examination of depositions, were brought before the lords, it was found that a sudden prorogation might often interrupt a decision; and the question arose whether writs of error, and other proceedings of a similar nature, did not, according to precedent or analogy, cease, or, in technical language, abate, at the close of a session. An order was accordingly made by the house on March 11, 1673, that "the lords' committees for privi-

leges should inquire whether an appeal to this house, either by writ of error or petition, from the proceedings of any other court, being depending and not determined in one session of parliament, continue in statu quo unto the next session of parliament, without renewing the writ of error or petition or beginning all anew." The committee reported on the 29th of March, after misreciting the order of reference to them in a very remarkable manner, by omitting some words and interpolating others, so as to make it far more extensive than it really was, that upon the consideration of precedents, which they specify, they came to a resolution that "businesses depending in one parliament or session of parliament have been continued to the next session of the same parliament, and the proceedings thereupon have remained in the same state in which they were left when last in agitation." The house approved of this resolution, and ordered it accordingly.

This resolution was decisive as to the continuance of ordinary judicial business beyond the termination of a session. It was still open to dispute whether it might not abate by a dissolution; and the peculiar case of impeachment to which, after the dissolution of the long parliament in 1678, every one's attention was turned, seemed to stand on different grounds. It was referred, therefore, to the committee of privileges on the 11th of March, 1679, to consider whether petitions of appeal which were presented to this house in the last parliament be still in force to be proceeded on. Next day it is referred to the same committee, on a report of the matter of fact as to the impeachments of the earl of Danby and the five popish lords in the late parliament, to consider of the state of the said impeachments and all the incidents relating thereto, and to report to the house. On the 18th of March lord Essex reported from the committee that, "upon perusal of the judgment of this house of the 29th of March, 1673, they are of opinion that, in all cases of appeals and writs of error, they continue, and are to be proceeded on, in statu quo, as they stood at the dissolution of the last parliament, without beginning de novo. . . . And, upon consideration had of the matter referred to their lordships concerning the state of the impeachments brought up from the house of commons the last parliament, &c. . . . they are of opinion that the dissolution of the last parliament doth not alter the state of the impeachments brought up by the commons in that parliament." This report was taken into consideration next day by the house; and after a debate, after the previous question had been moved and lost, it was resolved to agree with the committee.

This resolution became for some years the acknowledged law of parliament. But in the parliament of 1685, the impeached lords having petitioned the house, it was resolved that the order of the

19th of March, 1679, be reversed and annulled as to impeachments and they were consequently released from their recognizances.

The first of these two contradictory determinations is not certainly free from that reproach which so often contaminates our precedents of parliamentary law, and renders an honest man reluctant to show them any greater deference than is strictly necessary. It passed during the violent times of the popish plot; and a contrary resolution would have set at liberty the five catholic peers committed to the Tower, and enabled them probably to quit the kingdom before a new impeachment could be preferred. It must be acknowledged, at the same time, that it was borne out in a considerable degree by the terms of the order of 1673, which seems liable to no suspicion of answering a temporary purpose; and that the court party in the house of lords were powerful enough to have withstood any flagrant innovation in the law of parliament. As for the second resolution, that of 1685, which reversed the former, it was passed in the very worst of times; and, if we may believe the protest signed by the earl of Anglesea and three other peers, with great precipitation and neglect of usual forms. It was not however annulled after the revolution; but, on the contrary, received what may seem at first sight a certain degree of confirmation from an order of the house of lords in 1690, on the petitions of lords Salisbury and Peterborough, who had been impeached in the preceding parliament, to be discharged; which was done, after reading the resolutions of 1679 and 1685, and a long debate thereon. But as a general pardon had come out in the mean time, by which the judges held that the offences imputed to these two lords had been discharged, and as the commons showed no disposition to follow up their impeachment against them, no parliamentary reasoning can perhaps be founded on this precedent. In the case of the duke of Leeds, impeached by the commons in 1695, no further proceedings were had; but the lords did not make an order for his discharge from the accusation till five years after three dissolutions had intervened, and grounded it upon the commons not proceeding with the impeachment. They did not, however, send a message to inquire if the commons were ready to proceed, which, according to parliamentary usage, would be required in case of a pending impeachment. The cases of lords Somers, Orford, and Halifax were similar to that of the duke of Leeds, except that so long a period did not intervene. These instances therefore rather tend to confirm the position that impeachments did not ipso facto abate by a dissolution, notwithstanding the reversal of the order of 1679. In the case of the earl of Oxford, it was formally resolved in 1717 that an impeachment does not determine by a prorogation of parliament; an authority conclusive to those who maintain that no difference exists

those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North,³ but has not the slightest corroboration from any evidence, nor does it seem to have been suggested by the contemporary libellers of the court party. That he might have had, as an active magistrate, private enemies whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered; nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck: and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence on that occasion was strongly to confirm the supposition that he had perished by the hands of assassins. His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at the time it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates, a circumstance not in itself highly important, but was supposed to have received the confidential communications of Coleman.⁴

Another circumstance, much calculated to persuade ordinary minds of the truth of the plot, was the trial of Reading, a Romish attorney, for tampering with the witnesses against the accused catholic peers, in order to make them keep out of the way. As such clandestine dealing with witnesses creates a strong, and perhaps with some too strong, a presumption of guilt, where justice is sure to be uprightly administered, men did not make a fair distinction as to times when the violence of the court and jury gave no reasonable hope of escape, and when the most innocent party would much

³ *Examen*, p. 196.

⁴ It was deposed by a respectable witness that Godfrey entertained apprehensions on account of what he had done as to the plot, and had said, "On my conscience, I believe I shall be the first martyr." *State Trials*, vii. 162. These little addi-

tional circumstances, which are suppressed by later historians, who speak of the plot as unfit to impose on any but the most bigoted fanatics, contributed to make up a body of presumptive and positive evidence from which human belief is rarely withheld.

rather procure the absence of a perjured witness than trust to the chance of disproving his testimony.

§ 14. There was indeed good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The State Trials, none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial.

It is remarkable that, although the king might be justly surmised to give little credence to the pretended plot, and the duke of York was manifestly affected in his interests by the heats it excited, yet the judges most subservient to the court, Scroggs, North, Jones, went with all violence into the popular cry, till, the witnesses beginning to attack the queen and to menace the duke, they found it was time to rein in, as far as they could, the passions they had instigated.⁵ Pemberton, a more honest man in political matters, showed a remarkable intemperance and unfairness in all trials relating to popery. Even in that of lord Stafford in 1680, the last, and perhaps the worst, proceeding under this delusion, though the court had a standing majority in the house of lords, he was convicted by fifty-five peers against thirty-one; the earl of Nottingham, lord-chancellor, the duke of Lauderdale, and several others of the administration voting him guilty, while he was acquitted by the honest Hollis and the acute Halifax. So far was the belief in the popish plot, or the eagerness in hunting its victims to death, from being confined to the whig faction, as some writers have been willing to insinuate. None had more contributed to raise the national outcry against the accused, and create a firm persuasion of the reality of the plot, than the clergy in their sermons, even the most respectable of their order, Saneroff, Sharp, Barlow, Burnet, Tillotson, Stillingfleet; inferring its truth from Godfrey's murder or Coleman's letter, calling for the severest laws against catholics, and imputing to them the fire of London, nay even the death of Charles I.

§ 15. Though the duke of York was not charged with participation in the darkest schemes of the popish conspirators, it was evident that his succession was the great aim of their endeavours, and evident also that he had been engaged in the more real and

⁵ The moment when the judges veered round was on the trial of sir George Wakeman, physician to the queen. Scroggs, who had been infamously partial against

the prisoners upon every former occasion now treated Oates and Bedloe as they deserved, though to the aggravation of his own disgrace.

those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North,³ but has not the slightest corroboration from any evidence, nor does it seem to have been suggested by the contemporary libellers of the court party. That he might have had, as an active magistrate, private enemies whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered; nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck: and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence on that occasion was strongly to confirm the supposition that he had perished by the hands of assassins. His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at the time it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates, a circumstance not in itself highly important, but was supposed to have received the confidential communications of Coleman.⁴

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the prisoners upon every former occasion now treated Oates and Bedloe as they deserved, though to the aggravation of his own disgrace.

§ 16. The bill of exclusion was drawn with as much regard to the inheritance of the duke of York's daughters as they could reasonably demand, or as any lawyer engaged for them could have shown; though something different seems to be insinuated by Burnet. It provided that the imperial crown of England should descend to and be enjoyed by such person or persons successively during the life of the duke of York as should have inherited or enjoyed the same in case he were naturally dead. If the princess of Orange was not expressly named (which, the bishop tells us, gave a jealousy, as though it were intended to keep that matter still undetermined), this silence was evidently justified by the possible contingency of the birth of a son to the duke, whose right there was no intention in the framers of the bill to defeat. But a large part of the opposition had unfortunately other objects in view. It had been the great error of those who withstood the arbitrary counsels of Charles II. to have admitted into their closest confidence, and in a considerable degree to the management of their party, a man so destitute of all honest principle as the earl of Shaftesbury. Under his contaminating influence their passions became more untractable, their connections more seditious and demoeratical, their schemes more revolutionary; and they broke away more and more from the line of national opinion, till a fatal reaction involved themselves in ruin, and exposed the cause of public liberty to its most imminent peril. The countenance and support of Shaftesbury brought forward that unconstitutional and most impolitic scheme of the duke of Monmouth's succession. There could hardly be a greater insult to a nation used to respect its hereditary line of kings than to set up the bastard of a prostitute, without the least pretence of personal excellence or public services, against a princess of known virtue and attachment to the protestant religion. And the effrontery of this attempt was aggravated by the libels eagerly circulated to dupe the credulous populace into a belief of Monmouth's legitimacy. The weak young man, lured on to destruction by the arts of intriguers and the applause of the multitude, gave just offence to sober-minded patriots, who knew where the true hopes of public liberty were anchored, by a kind of triumphal procession through parts of the country, and by other indications of a presumptuous ambition.

§ 17. If any apology can be made for the encouragement given by some of the whig party (for it was by no means general) to the pretensions of Monmouth, it must be found in their knowledge of the king's affection for him, which furnished a hope that he might more easily be brought in to the exclusion of his brother for the sake of so beloved a child than for the prince of Orange. And doubtless there was a period when Charles's acquiescence in the

exclusion did not appear so unattainable as, from his subsequent line of behaviour, we are apt to consider it. It appears from the recently published *Life of James* that, in the autumn of 1680, the embarrassment of the king's situation, and the influence of the duchess of Portsmouth, who had gone over to the exclusionists, made him seriously deliberate on abandoning his brother. Whether from natural instability of judgment, from the steady adherence of France to the duke of York, or from observing the great strength of the tory party in the house of lords, where the bill was rejected by a majority of 63 to 30, he soon returned to his former disposition. It was long, however, before he treated James with perfect cordiality. Conscious of his own insincerity in religion, which the duke's bold avowal of an obnoxious creed seemed to reproach, he was provoked at bearing so much of the odium and incurring so many of the difficulties which attended a profession that he had not ventured to make.

In the apprehensions excited by the king's unsteadiness and the defection of the duchess of Portsmouth, the duke deemed his fortunes so much in jeopardy as to have resolved on exciting a civil war, rather than yield to the exclusion. The episcopal party in Scotland had gone such lengths that they could hardly be safe under any other king. The catholics of England were of course devoted to him. With the help of these he hoped to show himself so formidable that Charles would find it his interest to quit that cowardly line of politics to which he was sacrificing his honour and affections. Louis, never insensible to any occasion of rendering England weak and miserable, directed his ambassador to encourage the duke in this guilty project with the promise of assistance. It seems to have been prevented by the wisdom or public spirit of Churchill, who pointed out to Barillon the absurdity of supposing that the duke could stand by himself in Scotland. This scheme of lighting up the flames of civil war in three kingdoms, for James's private advantage, deserves to be more remarked than it has hitherto been at a time when his apologists seem to have become numerous. If the designs of Russell and Sidney for the preservation of their country's liberty are blamed as rash and unjustifiable, what name shall we give to the project of maintaining the pretensions of an individual by means of rebellion and general bloodshed?

§ 18. It is well known that those who took a concern in the maintenance of religion and liberty were much divided as to the best expedients for securing them; some, who thought the exclusion too violent, dangerous, or impracticable, preferring the enactment of limitations on the prerogatives of a catholic king. As soon as the exclusion became the topic of open discussion, the king

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repeatedly offered to grant every security that could be demanded consistently with the lineal succession. Hollis, Halifax, and for a time Essex, as well as several eminent men in the lower house, were in favour of limitations. But those which they intended to insist upon were such encroachments on the constitutional authority of the crown, that, except a title and revenue, which Charles thought more valuable than all the rest, a popish king would enjoy no one attribute of royalty. The king himself, on the 30th of April, 1679, before the heats on the subject had become so violent as they were the next year, offered not only to secure all ecclesiastical preferments from the control of a popish successor, but to provide that the parliament in being at a demise of the crown, or the last that had been dissolved, should immediately sit and be indissoluble for a certain time; that none of the privy council, nor judges, lord-lieutenant, deputy-lieutenant, nor officer of the navy, should be appointed during the reign of a catholic king, without consent of parliament. He offered at the same time most readily to consent to any further provision that could occur to the wisdom of parliament, for the security of religion and liberty consistently with the right of succession. Halifax, the eloquent and successful opponent of the exclusion, was the avowed champion of limitations. It was proposed, in addition to these offers of the king, that the duke, in case of his accession, should have no negative voice on bills; that he should dispose of no civil or military posts without the consent of parliament; that a council of forty-one, nominated by the two houses, should sit permanently during the recess or interval of parliament, with power of appointing to all vacant offices, subject to the future approbation of the lords and commons. These extraordinary innovations would, at least for the time, have changed our constitution into a republic; and justly appeared to many persons more revolutionary than an alteration in the course of succession. The duke of York looked on them with dismay; Charles, indeed, privately declared that he would never consent to such infringements of the prerogative. It is not, however, easy to perceive how he could have escaped from the necessity of adhering to his own propositions, if the house of commons would have relinquished the bill of exclusion. Another expedient, still more ruinous to James than that of limitations, was what the court itself suggested in the Oxford parliament, that, the duke retaining the title of king, a regent should be appointed, in the person of the princess of Orange, with all the royal prerogatives; nay, that the duke, with his pageant crown on his head, should be banished from England during his life. This proposition, which is a great favourite with Burnet, appears liable to the same objections as were justly urged against a similar scheme at the revolution. It was certain that in either

case James would attempt to obtain possession of power by force of arms; and the law of England would not treat very favourably those who should resist an acknowledged king in his natural capacity, while the statute of Henry VII. would, legally speaking, afford a security to the adherents of a *de facto* sovereign.

§ 19. It was in the year 1679 that the words Whig and Tory were first heard in their application to English factions; and, though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. There were then indeed questions in agitation which rendered the distinction more broad and intelligible than it has generally been in later times. One of these, and the most important, was the bill of exclusion; in which, as it was usually debated, the republican principle, that all positive institutions of society are in order to the general good, came into collision with that of monarchy, which rests on the maintenance of a royal line, as either the end, or at least the necessary means, of lawful government. But, as the exclusion was confessedly among those extraordinary measures to which men of tory principles are sometimes compelled to resort in great emergencies, and which no rational whig espouses at any other time, we shall better perhaps discern the formation of these grand political sects in the petitions for the sitting of parliament, and in the counter addresses of the opposite party.

§ 20. In the spring of 1679 Charles established a new privy council, by the advice of sir William Temple, consisting in great part of those eminent men in both houses of parliament who had been most prominent in their opposition to the late ministry. He publicly declared his resolution to govern entirely by the advice of this council and that of parliament. The duke of York was kept in what seemed a sort of exile at Brussels. But the just suspicion attached to the king's character prevented the commons from placing much confidence in this new ministry; and, as frequently happens, abated their esteem for those who, with the purest intentions, had gone into the council. They had soon cause to perceive that their distrust had not been excessive. The ministers were constantly beaten in the house of lords; an almost certain test, in our government, of the court's insincerity. The parliament was first prorogued, then dissolved; against the advice, in the latter instance, of the majority of that council by whom the king had pledged himself to be directed. A new parliament, after being summoned to meet in October, 1679, was prorogued for a twelve-month without the avowed concurrence of any member of the council. Lord Russell, and others of the honestest party, withdrew from a board where their presence was only asked in mockery or deceit; and the whole specious scheme of Temple came to nothing.

before the conclusion of the year which had seen it displayed. Its author, chagrined at the disappointment of his patriotism and his vanity, has sought the causes of failure in the folly of Monmouth and perverseness of Shaftesbury. He was not aware, at least in their full extent, of the king's intrigues at this period. Charles, who had been induced to take those whom he most disliked into his council, with the hope of obtaining money from parliament, or of parrying the exclusion bill, and had consented to the duke of York's quitting England, found himself enthralled by ministers whom he could neither corrupt nor deceive; Essex, the firm and temperate friend of constitutional liberty in power as he had been out of it, and Halifax, not yet led away by ambition or resentment from the cause he never ceased to approve. He had recourse therefore to his accustomed refuge, and humbly implored the aid of Louis against his own council and parliament. He conjured his patron not to lose this opportunity of making England for ever dependent upon France. These are his own words, such at least as Barillon attributes to him. In pursuance of this overture, a secret treaty was negotiated between the two kings; whereby, after a long haggling, Charles, for a pension of 1,000,000 livres annually during three years, obliged himself not to assemble parliament during that time. This negotiation was broken off through the apprehensions of Hyde and Sutherland, who had been concerned in it, about the end of November, 1679, before the long prorogation which is announced in the Gazette by a proclamation of December 11th. But, the resolution having been already taken not to permit the meeting of parliament, Charles persisted in it as the only means of escaping the bill of exclusion, even when deprived of the pecuniary assistance to which he had trusted.

§ 21. Though the king's behaviour on this occasion exposed the fallacy of all projects for reconciliation with the House of commons, it was very well calculated for his own ends; nor was there any part of his reign wherein he acted with so much prudence as from this time to the dissolution of the Oxford parliament. The scheme concerted by his adversaries, and already put in operation, of pouring in petitions from every part of the kingdom for the meeting of parliament, he checked in the outset by a proclamation, artfully drawn up by chief-justice North, which, while it kept clear of anything so palpably unconstitutional as a prohibition of petitions, served the purpose of manifesting the king's dislike to them, and encouraged the magistrates to treat all attempts that way as seditious and illegal, while it drew over the neutral and lukewarm to the safer and stronger side. Then were first ranged against each other the hosts of whig and tory, under their banners of liberty or loyalty; each zealous, at least in profession, to maintain the

established constitution, but the one seeking its security by new maxims of government, the other by an adherence to the old.^a It must be admitted that petitions to the king from bodies of his subjects, intended to advise or influence him in the exercise of his undoubted prerogatives, such as the time of calling parliament together, familiar as they may now have become, had no precedent, except one in the dark year 1640, and were repugnant to the ancient principles of our monarchy. The cardinal principle of toryism is, that the king ought to exercise all his lawful prerogatives without the interference, or the unsolicited advice, even of parliament, much less of the people. These novel efforts therefore were met by addresses from most of the grand juries, from the magistrates at quarter sessions, and from many corporations, expressing not merely their entire confidence in the king, but their *abhorrence* of the petitions for the assembling of parliament; a term which, having been casually used in one address, became the watch-word of the whole party. Some allowance must be made for the exertions made by the court, especially through the judges of assize, whose charges to grand juries were always of a political nature. Yet there can be no doubt that the strength of the tories manifested itself beyond expectation. Sluggish and silent in its fields, like the animal which it has taken for its type, the deep-rooted loyalty of the English gentry to the crown may escape a superficial observer, till some circumstance calls forth an indignant and furious energy. The temper shown in 1680 was not according to what the late elections would have led men to expect, not even to that of the next elections for the parliament at Oxford. A large majority returned on both these occasions, and that in the principal counties as much as in corporate towns, were of the whig principle. It appears that the ardent zeal against popery in the smaller freeholders must have overpowered the natural influence of the superior classes. The middling and lower orders, particularly in towns, were clamorous against the duke of York and the evil counsellors of the crown. But with the country gentlemen popery was scarce a more odious word than fanaticism; the memory of the late reign and of the usurpation was still recent, and in the violence of the commons, in the insolence of Monmouth and Shaftesbury, in the bold assaults upon hereditary right, they saw a faint image of that confusion which had once impoverished and humbled them. Meanwhile the king's dissimulation was quite sufficient for these simple loyalists; the very delusion of the popish plot raised his name for

^aThe name of whig, meaning sour milk, as is well known, is said to have originated in Scotland in 1648, and was given to those violent covenanters who opposed the duke

of Hamilton's invasion of England in order to restore Charles I. Tory was a similar nickname for some of the wild Irish in Ulster.

religion in their eyes, since his death was the declared aim of the conspirators; nor did he fail to keep alive this favourable prejudice by letting that imposture take its course, and by enforcing the execution of the penal laws against some unfortunate priests.

§ 22. It is among the great advantages of a court in its contention with the asserters of popular privileges that it can employ a circumspect and dissembling policy, which is never found on the opposite side. The demagogues of faction, or the aristocratic leaders of a numerous assembly, even if they do not feel the influence of the passions they excite, which is rarely the case, are urged onwards by their headstrong followers, and would both lay themselves open to the suspicion of unfaithfulness and damp the spirit of their party by a wary and temperate course of proceeding. Yet that incautious violence, to which ill-judging men are tempted by the possession of power, must in every case, and especially where the power itself is deemed an usurpation, cast them headlong. This was the fatal error of that house of commons which met in October, 1680; and to this the king's triumph may chiefly be ascribed. The addresses declaratory of abhorrence of petitions for the meeting of parliament were doubtless intemperate with respect to the petitioners; but it was preposterous to treat them as violations of privilege. A few precedents, and those in times of much heat and irregularity, could not justify so flagrant an encroachment on the rights of the private subject as the commitment of men for a declaration so little affecting the constitutional rights and functions of parliament. That the commons had no right of judicature was admitted: was it compatible, many might urge, to principles of reason and justice that they could, merely by using the words contempt or breach of privilege in a warrant, deprive the subject of that liberty which the recent statute of Habeas Corpus had secured against the highest ministers of the crown? Yet one Thompson, a clergyman at Bristol, having preached some virulent sermons, wherein he had traduced the memory of Hampden for refusing the payment of ship-money, and spoken disrespectfully of queen Elizabeth, as well as insulted those who petitioned for the sitting of parliament, was sent for in custody of the serjeant to answer at the bar for his high misdemeanor against the privileges of that house; and was afterwards compelled to find security for his forthcoming to answer to an impeachment voted against him on these strange charges. Many others were brought to the bar, not only for the crime of abhorrence, but for alleged misdemeanors still less affecting the privileges of parliament, such as remissness in searching for papists. Sir Robert Cann, of Bristol, was sent for in custody of the serjeant-at-arms, for publicly declaring that there was no popish, but only a presbyterian plot. A general panic, mingled with indignation, was

diffused through the country, till one Stawell, a gentleman of Devonshire, had the courage to refuse compliance with the speaker's warrant; and the commons, who hesitated at such a time to risk an appeal to the ordinary magistrates, were compelled to let this contumacy go unpunished. If, indeed, we might believe the journals of the house, Stawell was actually in custody of the serjeant, though allowed a month's time on account of sickness. This was most probably a subterfuge to conceal the truth of the case.

These encroachments, under the name of privilege, were exactly in the spirit of the long parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths that 1641 was come about again. There appeared indeed for several months a very imminent danger of civil war. I have already mentioned the projects of the duke of York, in case his brother had given way to the exclusion bill. There could be little reason to doubt that many of the opposite leaders were ready to try the question by arms. The just abhorrence good men entertain for such a calamity excites their indignation against those who conspicuously bring it on. And, however desirous some of the court might be to strengthen the prerogative by quelling a premature rebellion, the commons were, in the eyes of the nation, far more prominent in accelerating so terrible a crisis. Their votes in the session of November, 1680, were marked by the most extravagant factiousness. Their conduct in the short parliament held at Oxford, in March, 1681, served still more to alienate the peaceable part of the community. That session of eight days was marked by the rejection of a proposal to vest all effective power during the duke of York's life in a regent, which, as has been already observed, was by no means a secure measure, and by a much less justifiable attempt to screen the author of a treasonable libel from punishment under the pretext of impeaching him at the bar of the upper house. It seems difficult not to suspect that the secret instigation of Barillon, and even his gold, had considerable influence on some of those who swayed the votes of this parliament.

§ 23. Though the impeachment of Fitzharris, to which I have just alluded, was in itself a mere work of temporary faction, it brought into discussion a considerable question in our constitutional law, which deserves notice both on account of its importance and because a popular writer has advanced an untenable proposition on the subject. The commons impeached this man of high treason. The lords voted that he should be proceeded against at common law. It was resolved, in consequence, by the lower house, "that it is the undoubted right of the commons in parliament assembled to impeach before the lords in parliament any peer or commoner for

treason, or any other crime or misdemeanor: and that the refusal of the lords to proceed in parliament upon such impeachment is a denial of justice, and a violation of the constitution of parliament.' It seems indeed difficult to justify the determination of the lords. Certainly the declaration in the case of sir Simon de Bereford, who having been accused by the king, in the fourth year of Edward III., before the lords, of participating in the treason of Roger Mortimer, that noble assembly protested, "with the assent of the king in full parliament, that, albeit they had taken upon them, as judges of the parliament, in the presence of the king, to render judgment, yet the peers who then were or should be in time to come were not bound to render judgment upon others than peers, nor had power to do so; and that the said judgment thus rendered should never be drawn to example or consequence in time to come, whereby the said peers of the land might be charged to judge others than their peers, contrary to the laws of the land;" certainly, I say, this declaration, even if it amounted to a statute, concerning which there has been some question, was not necessarily to be interpreted as applicable to impeachments at the suit of the commons, wherein the king is no ways a party. There were several precedents in the reign of Richard II. of such impeachments for treason. There had been more than one in that of Charles I. And if the doctrine adopted by the lords were to be carried to its just consequences, all impeachment of commoners must be at an end; for no distinction is taken in the above declaration as to Bereford between treason and misdemeanor. The peers had indeed lost their ancient privilege in cases of misdemeanor, and were subject to the verdict of a jury; but the principle was exactly the same, and the right of judging commoners upon impeachment for corruption or embezzlement, which no one called in question, was as much an exception from the ordinary rules of law as in the more rare case of high treason. It is hardly necessary to observe that the 29th section of Magna Charta, which establishes the right of trial by jury, is by its express language solely applicable to the suits of the crown.

This very dangerous and apparently unfounded theory, broached upon the occasion of Fitzharris's impeachment by the earl of Nottingham, never obtained reception; and was rather intimated than avowed in the vote of the lords that he should be proceeded against at common law. But, after the revolution, the commons having impeached sir Adam Blair and some others of high treason, a committee was appointed to search for precedents on this subject; and, after full deliberation, the house of lords came to a resolution that they would proceed on the impeachments. The inadvertent position therefore of Blackstone,⁹ that a commoner cannot be impeached

for high treason, is not only difficult to be supported upon ancient authorities, but contrary to the latest determination of the supreme tribunal.

§ 24. No satisfactory elucidation of the strange libel for which Fitzharris suffered death has yet been afforded. There is much probability in the supposition that it was written at the desire of some in the court, in order to cast odium on their adversaries; a very common stratagem of unscrupulous partisans.¹⁰ It caused an impression unfavourable to the whigs in the nation. The court made a dexterous use of that extreme credulity which has been supposed characteristic of the English, though it belongs at least equally to every other people. They seized into their hands the very engines of delusion that had been turned against them. Those perjured witnesses, whom Shaftesbury had hallooed on through all the infamy of the popish plot, were now arrayed in the same court to swear treason and conspiracy against him. Though he escaped by the resoluteness of his grand jury, who refused to find a bill of indictment on testimony which they professed themselves to disbelieve, and which was probably false, yet this extraordinary deviation from the usual practice did harm rather than otherwise to the general cause of his faction. The judges had taken care that the witnesses should be examined in open court, so that the jury's partiality, should they reject such positive testimony, might become glaring. Whether the grand jury of London, in their celebrated ignoramus on the indictment preferred against Shaftesbury, had sufficient grounds for their incredulity I will not pretend to determine. There was probably no one man among them who had not implicitly swallowed the tales of the same witnesses in the trials for the plot. The nation, however, in general, less bigoted, or at least more honest in their bigotry, than those London citizens, was staggered by so many depositions to a traitorous conspiracy, in those who had pretended an excessive loyalty to the king's person. Men unaccustomed to courts of justice are naturally prone to give credit to the positive oaths of witnesses. They were still more persuaded when, as in the trial of College at Oxford, they saw this testimony sustained by the approbation of a judge (and that judge a decent person who gave no scandal), and confirmed by the verdict of a jury.

§ 25. The king's declaration of the reasons that induced him to dissolve the last parliament, being a manifesto against the late majority of the house of commons, was read in all churches. The clergy scarcely waited for this pretext to take a zealous part for the

¹⁰ Fitzharris was an Irish papist, who had evidently had interviews with the king through lady Portsmouth. One Hawkins, afterwards made dean of Winchester for his pains, published a narrative of this case, full of falsehoods.

crown. Every one knows their influence over the nation in any cause which they make their own. They seemed to change the war against liberty into a crusade. They re-echoed from every pulpit the strain of passive obedience, of indefeasible hereditary right, of the divine origin and patriarchal descent of monarchy. Now began again the loyal addresses, more numerous and ardent than in the last year, which overspread the pages of the London Gazette for many months. These effusions stigmatise the measures of the last three parliaments, dwelling especially on their arbitrary illegal votes against the personal liberty of the subject.

The whigs, meantime, so late in the heyday of their pride, lay, like the fallen angels, prostrate upon the fiery lake. The scoffs and gibes of libellers, who had trembled before the resolutions of the commons, were showered upon their heads. They had to fear, what was much worse than the insults of these vermin, the perjuries of mercenary informers suborned by their enemies to charge false conspiracies against them, and sure of countenance from the tainted benches of justice. The court, with an artful policy, though with detestable wickedness, secured itself against its only great danger, the suspicion of popery, by the sacrifice of Plunket, the titular archbishop of Dublin. The execution of this worthy and innocent person cannot be said to have been extorted from the king in a time of great difficulty, like that of lord Stafford. He was coolly and deliberately permitted to suffer death, lest the current of loyalty, still sensitive and suspicious upon the account of religion, might be somewhat checked in its course. Yet those who heap the epithets of merciless, inhuman, sanguinary, on the whig party for the impeachment of lord Stafford, in whose guilt they fully believed, seldom mention, without the characteristic distinction of "good-natured," that sovereign who permitted the execution of Plunket, of whose innocence he was assured.

§ 26. The hostility of the city of London, and of several other towns, towards the court, degenerating no doubt into a factious and indecent violence, gave a pretext for the most dangerous aggression on public liberty that occurred in the present reign. The power of the democracy in that age resided chiefly in the corporations. These returned, exclusively or principally, a majority of the representatives of the commons. So long as they should be actuated by that ardent spirit of protestantism and liberty which prevailed in the middling classes, there was little prospect of obtaining a parliament that would co-operate with the Stuart scheme of government. The administration of justice was very much in the hands of their magistrates, especially in Middlesex, where all juries are returned by the city sheriffs. It was suggested, therefore, by some crafty lawyers that a judgment of forfeiture obtained against the corporation of

London would not only demolish that citadel of insolent rebels, but intimidate the rest of England by so striking an example. An information, as it is called, *quo warranto*, was accordingly brought into the court of king's bench against the corporation. Two acts of the common council were alleged as sufficient misdemeanors to warrant a judgment of forfeiture: one, the imposition of certain tolls on goods brought into the city markets by an ordinance or by-law of their own; the other, their petition to the king in December, 1679, for the sitting of parliament, and its publication throughout the country. It would be foreign to the purpose of this work to inquire whether a corporation be in any case subject to forfeiture, the affirmative of which seems to have been held by courts of justice since the revolution; or whether the exaction of tolls in their markets, in consideration of erecting stalls and standings, were within the competence of the city of London; or, if not so, whether it were such an offence as could legally incur the penalty of a total forfeiture and disfranchisement; since it was manifest that the crown made use only of this additional pretext in order to punish the corporation for its address to the king. We are not, however, so much concerned to argue the matter of law in this question, as to remark the spirit in which the attack on this stronghold of popular liberty was conceived. The court of king's bench pronounced judgment of forfeiture against the corporation; but this judgment, at the request of the attorney-general, was only recorded; the city continued in appearance to possess its corporate franchises, but upon submission to certain regulations; namely, that no mayor, sheriff, recorder, or other chief officer, should be admitted until approved by the king; that, in the event of his twice disapproving their choice of a mayor, he should himself nominate a fit person, and the same in case of sheriffs, without waiting for a second election; that the court of aldermen, with the king's permission, might remove any one of their body; that they should have a negative on the elections of common-councilmen, and, in case of disapproving a second choice, have themselves the nomination. The corporation submitted thus to purchase the continued enjoyment of its estates at the expense of its municipal independence; yet, even in the prostrate condition of the whig party, the question to admit these regulations was carried by no great majority in the common councils. The city was, of course, absolutely subservient to the court from this time to the revolution.

After the fall of the capital it was not to be expected that towns less capable of defence should stand out. Informations *quo warranto* were brought against several corporations, and a far greater number hastened to anticipate the assault by voluntary surrenders. I

seemed to be recognized as law by the judgment against London that any irregularity or misuse of power in a corporation might incur a sentence of forfeiture, and few could boast that they were invulnerable at every point. The judges of assize in their circuits prostituted their influence and authority to forward this and every other encroachment of the crown. Jeffreys, on the northern circuit, in 1684, to use the language of Charles II.'s most unblushing advocate, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns."¹ They received, instead, new charters, framing the constitution of these municipalities in a more oligarchical model, and reserving to the crown the first appointment of those who were to form the governing part of the corporation. These changes were gradually brought about in the last three years of Charles's reign and in the beginning of the next.

§ 27. There can be nothing so destructive to the English constitution, not even the introduction of a military force, as the exclusion of the electoral body from their franchises. The people of this country are, by our laws and constitution, bound only to obey a parliament duly chosen; and this violation of charters, in the reigns of Charles and James, appears to be the great and leading justification of that event which drove the latter from the throne. It can therefore be no matter of censure, in a moral sense, that some men of pure and patriotic virtue, mingled, it must be owned, with others of a far inferior temper, began to hold consultations as to the best means of resisting a government which, whether to judge from these proceedings, or from the language of its partisans, was aiming without disguise at an arbitrary power. But as resistance to established authority can never be warrantable until it is expedient, we could by no means approve any schemes of insurrection that might be projected in 1682, unless we could perceive that there was a fair chance of their success. And this we are not led, by what we read of the spirit of those times, to believe. The tide ran violently in another direction; the courage of the whigs was broken; their adversaries were strong in numbers and in real. But hence it is reasonable to infer that men like lord Essex and lord Russell, with so much to lose by failure, with such good sense, and such abhorrence of civil calamity, would not ultimately have resolved on the desperate issue of arms, though they might deem it prudent to form estimates of their strength, and to knit together a confederacy which absolute necessity might call into action. It is beyond doubt that the supposed conspirators had debated among themselves the subject of an insurrection, and poised the chances of civil war. Thus much the most jealous lawyer, I presume, will allow might

prisoner with more humanity than was usually displayed on the bench; but, aware of his precarious tenure in office, he did not venture to check the counsel for the crown, Sawyer and Jeffreys, permitting them to give a great body of hearsay evidence, with only the feeble and useless remark that it did not affect the prisoner. Yet he checked lord Anglesea, when he offered similar evidence for the defence. In his direction to the jury, it deserves to be remarked that he by no means advanced the general proposition which better men have held, that a conspiracy to levy war is in itself an overt act of compassing the king's death; limiting it to cases where the king's person might be put in danger, as, in the immediate instance, by the alleged scheme of seizing his guards. His language, indeed, as recorded in the printed trial, was such as might have produced a verdict of acquittal from a jury tolerably disposed towards the prisoner; but the sheriffs, North and Rich, who had been illegally thrust into office, being men wholly devoted to the prerogative, had taken care to return a panel in whom they could confide.

The trial of Algernon Sidney, at which Jeffreys, now raised to the post of chief justice of the king's bench, presided, is as familiar to all my readers as that of lord Russell. Their names have been always united in grateful veneration and sympathy. It is notorious that Sidney's conviction was obtained by a most illegal distortion of the evidence. Besides lord Howard, no living witness could be produced to the conspiracy for an insurrection; and though Jeffreys permitted two others to prepossess the jury by a secondhand story, he was compelled to admit that their testimony could not directly affect the prisoner. The attorney-general, therefore, had recourse to a paper found in his house, which was given in evidence, either as an overt act of treason by its own nature, or as connected with the alleged conspiracy; for though it was only in the latter sense that it could be admissible at all, yet Jeffreys took care to insinuate, in his charge to the jury, that the doctrines it contained were treasonable in themselves, and without reference to other evidence. In regard to truth, and to that justice which cannot be denied to the worst men in their worst actions, I must observe that the common accusation against the court in this trial, of having admitted insufficient proof by the mere comparison of handwriting, though alleged, not only in most of our historians, but in the act of parliament reversing Sidney's attainder, does not appear to be well founded; the testimony to that fact, unless the printed trial is falsified in an extraordinary degree, being such as would be received at present. We may allow, also, that the passages from this paper, as laid in the indictment, containing very strong assertions of the right of the people to depose an unworthy king, might by possibility, if connected by other evidence with the conspiracy itself, have been

admissible as presumptions for the jury to consider whether they had been written in furtherance of that design. But when they came to be read on the trial with their context, though only with such parts of that as the attorney-general chose to produce out of a voluminous manuscript, it was clear that they belonged to a theoretical work on government, long since perhaps written, and incapable of any bearing upon the other evidence.

The manifest iniquity of this sentence upon Algernon Sidney, as well as the high courage he displayed throughout these last scenes of his life, have inspired a sort of enthusiasm for his name, which neither what we know of his story, nor the opinion of his contemporaries, seems altogether to warrant. The crown of martyrdom should be suffered perhaps to exalt every virtue, and efface every defect, in patriots, as it has often done in saints. In the faithful mirror of history Sidney may lose something of this lustre. He possessed no doubt a powerful, active, and undaunted mind, stored with extensive reading on the topics in which he delighted. But having proposed one only object for his political conduct, the establishment of a republic in England, his pride and inflexibility, though they gave a dignity to his character, rendered his views narrower and his temper unaccommodating. It was evident to every reasonable man that a republican government, being adverse to the prepossessions of a great majority of the people, could only be brought about and maintained by the force of usurpation. Yet for this idol of his speculative hours he was content to sacrifice the liberties of Europe, to plunge the country in civil war, and even to stand indebted to France for protection. He may justly be suspected of having been the chief promoter of the dangerous cabals with Barillon; nor could any tool of Charles's court be more sedulous in representing the aggressions of Louis XIV. in the Netherlands as indifferent to our honour and safety.

Sir Thomas Armstrong, who had fled to Holland on the detection of the plot, was given up by the States. A sentence of outlawry, which had passed against him in his absence, is equivalent, in cases of treason, to a conviction of the crime. But the law allows the space of one year, during which the party may surrender himself to take his trial. Armstrong, when brought before the court, insisted on this right, and demanded a trial. Nothing could be more evident, in point of law, than that he was entitled to it; but Jeffreys, with inhuman rudeness, treated his claim as wholly unfounded, and would not even suffer counsel to be heard in his behalf. He was executed accordingly without trial.

§ 29. The prejudice against the whig party, which had reached so great a height in 1681, was still farther enhanced by the detection of the late conspiracy. The atrocious scheme of assassination alleged

against Walcot and some others who had suffered was blended by the arts of the court and clergy, and by the blundering credulity of the gentry, with those less heinous projects ascribed to lord Russell and his associates. These projects, if true in their full extent, were indeed such as men honestly attached to the government of their country could not fail to disapprove. For this purpose a declaration full of malicious insinuations was ordered to be read in all churches. It was generally commented upon, we may make no question, in one of those loyal discourses, which, trampling on all truth, charity, and moderation, had no other scope than to inflame the hearers against nonconforming protestants, and to throw obloquy on the constitutional privileges of the subject.

It is not my intention to censure, in any strong sense of the word, the Anglican clergy at this time for their assertion of absolute non-resistance, so far as it was done without calumny and insolence towards those of another way of thinking, and without self-interested adulation of the ruling power. Their error was very dangerous, and had nearly proved destructive of the whole constitution; but it was one which had come down with high recommendation, and of which they could only perhaps be undeceived, as men are best undeceived of most errors, by experience that it might hurt themselves. It was the tenet of their homilies, their canons, their most distinguished divines and casuists; it had the apparent sanction of the legislature in a statute of the present reign. Many excellent men, as was shown after the revolution, who had never made use of this doctrine as an engine of faction or private interest, could not disentangle their minds from the arguments or the authority on which it rested. But by too great a number it was eagerly brought forward to serve the purposes of arbitrary power, or at best to fix the wavering protestantism of the court by professions of unimpeachable loyalty. To this motive, in fact, we may trace a good deal of the vehemence with which the non-resisting principle had been originally advanced by the church of England under the Tudors, and was continually urged under the Stuarts. If we look at the tracts and sermons published by both parties after the restoration, it will appear manifest that the Romish and Anglican churches bade, as it were, against each other for the favour of the two royal brothers. The one appealed to its acknowledged principle, while it denounced the pretensions of the holy see to release subjects from their allegiance, and the bold theories of popular government which Mariana and some other Jesuits had promulgated. The other retaliated on the first movers of the Reformation, and expatiated on the usurpation of lady Jane Grey, not to say Elizabeth, and the republicanism of Knox or Calvin.

From the era of the exclusion-bill especially, to the death of

Charles II., a number of books were published in favour of an indefeasible hereditary right of the crown, and of absolute non-resistance. These were, however, of two very different classes. The authors of the first, who were perhaps the more numerous, did not deny the legal limitations of monarchy. They admitted that no one was bound to concur in the execution of unlawful commands. Hence the obedience they deemed indispensable was denominated passive; an epithet, which in modern usage is little more than redundant, but at that time made a sensible distinction. If all men should confine themselves to this line of duty, and merely refuse to become the instruments of such unlawful commands, it was evident that no tyranny could be carried into effect. If some should be wicked enough to co-operate against the liberties of their country, it would still be the laudable obligation of Christians to submit. Of this, which may be reckoned the moderate party, the most eminent were Hickee, in a treatise called *Jovian*, and Sherlock, in his case of resistance to the supreme powers. To this also must have belonged archbishop Sancroft, and the great body of nonjuring clergy who had refused to read the declaration of indulgence under James II., and whose conduct in that respect would be utterly absurd, except on the supposition that there existed some lawful boundaries of the royal authority.

But besides these men, who kept some measures with the constitution, another and a pretty considerable class of writers did not hesitate to avow their abhorrence of all limitations upon arbitrary power. Brady went back to the primary sources of our history, and endeavoured to show that *Magna Charta*, as well as every other constitutional law, were but rebellious encroachments on the ancient uncontrollable imprescriptible prerogatives of the monarchy. But the author most in vogue with the partisans of despotism was sir Robert Filmer. He had lived before the civil war, but his posthumous writings came to light about this period. They contain an elaborate vindication of what was called the patriarchal scheme of government, which, rejecting with scorn that original contract whence human society had been supposed to spring, derives all legitimate authority from that of primogeniture, the next heir being king by divine right and as incapable of being restrained in his sovereignty as of being excluded from it.

These treatises of Filmer obtained a very favourable reception. We find the patriarchal origin of government frequently mentioned in the publications of this time as an undoubted truth. Considered with respect to his celebrity rather than his talents, he was not, as some might imagine, too ignoble an adversary for Locke to have combated. Another person, far superior to Filmer in political eminence, undertook at the same time an unequivocal defence of

CHAPTER XIII.

ON THE STATE OF THE CONSTITUTION UNDER
CHARLES II.

1. Effect of the Press. § 2. Restrictions upon it before and after the Restoration. § 3. Licensing Acts. § 4. Political Writings checked by the Judges. § 5. Instances of Illegal Proclamations not numerous. § 6. Juries fined for Verdicts. § 7. Question of their Right to return a General Verdict. § 8. Habeas Corpus Act passed. § 9. Differences between Lords and Commons. § 10. Judicial Powers of the Lords historically traced. § 11. Their Pretensions about the Time of the Restoration. § 12. Resistance made by the Commons. Dispute about their original Jurisdiction, and that in Appeals from Courts of Equity. § 13. Question of the Exclusive Right of the Commons as to Money Bills. § 14. Its History. The Right extended farther. § 15. State of the Upper House under the Tudors and Stuarts. Augmentation of the Temporal Lords. § 16. State of the Commons. Increase of their Members. Question as to Rights of Election. § 17. Four different Theories as to the Original Principle.

§ 1. It may seem rather an extraordinary position, after the last chapters, yet is strictly true, that the fundamental privileges of the subject were less invaded, the prerogative swerved into fewer excesses, during the reign of Charles II. than in any former period of equal length. Thanks to the patriotic energies of Selden and Eliot, of Pym and Hampden, the constitutional boundaries of royal power had been so well established that no minister was daring enough to attempt any flagrant and general violation of them. The frequent session of parliament, and its high estimation of its own privileges, furnished a security against illegal taxation. Nothing of this sort has been imputed to the government of Charles, the first king of England, perhaps, whose reign was wholly free from such a charge. And as the nation happily escaped the attempts that were made after the Restoration to revive the star-chamber and high commission courts, there were no means of chastising political delinquencies except through the regular tribunals of justice and through the verdict of a jury. Ill as the one were often constituted, and submissive as the other might often be found, they afforded something more of a guarantee, were it only by the publicity of their proceedings, than the dark and silent divan of courtiers and prelates who sat in judgment under the two former kings of the house of Stuart. Though the bench was frequently subservient, the bar contained high-spirited advocates whose firm defence of their clients the judges often reproved, but no longer affected to punish. The press, above all, was in continual service. An eagerness to peruse

licentiousness of the late times many evil-disposed persons had been encouraged to print and sell heretical and seditious books," prohibits every private person from printing any book or pamphlet, unless entered with the stationers' company, and duly licensed in the following manner: to wit, books of law by the chancellor or one of the chief-justices, of history and politics by the secretary of state, of heraldry by the kings at arms, of divinity, physic, or philosophy, by the bishops of Canterbury or London, or, if printed at either university, by its chancellor. The number of master printers was limited to twenty; they were to give security, to affix their names, and to declare the author, if required by the licenser. The king's messengers, by warrant from a secretary of state, or the master and wardens of the stationers' company, were empowered to seize unlicensed copies wherever they should think fit to search for them, and, in case they should find any unlicensed books suspected to contain matters contrary to the church or state, they were to bring them to the two bishops before mentioned, or one of the secretaries. No books were allowed to be printed out of London, except in York and in the universities. The penalties for printing without licence were of course heavy. This act was only to last three years; and, after being twice renewed (the last time until the conclusion of the first session of the next parliament), expired consequently in 1679; an era when the house of commons were happily in so different a temper that any attempt to revive it must have proved abortive. During its continuance the business of licensing books was entrusted to sir Roger L'Estrange, a well-known pamphleteer of that age, and himself a most scurrilous libeller in behalf of the party he espoused, that of popery and despotic power. It is hardly necessary to remind the reader of the objections that were raised to one or two lines in *Paradise Lost*.

§ 4: Though a previous licence ceased to be necessary, it was held by all the judges, having met for this purpose (if we believe chief-justice Scroggs), by the king's command, that all books scandalous to the government or to private persons may be seized, and the authors or those exposing such books punished; and that all writers of false news, though not scandalous or seditious, are indictable on that account. But in a subsequent trial he informs the jury that, "when by the king's command we were to give in our opinion what was to be done in point of regulation of the press, we did all subscribe that to print or publish any news, books, or pamphlets of news whatsoever, is illegal; that it is a manifest intent to the breach of the peace, and they may be proceeded against by law as an illegal thing. Suppose now that this thing is not scandalous, what then? If there had been no reflection in this book at all, yet it is *illicite*; and the author ought to be convicted

of the late usurpation, had been the standing record of primeval liberty—the trial by jury: whatever infringement had been made on this, in many cases of misdemeanour, by the present jurisdiction of the star-chamber, it was impossible, after the bold reformers of 1641 had lopped off that unsightly excrescence from the constitution, to prevent a criminal charge from passing the legal course of investigation through the inquest of a grand jury and the verdict in open court of a petty jury. But the judges, and other ministers of justice, for the sake of their own authority or that of the crown, devised various means of subjecting juries to their own direction, by intimidation, by unfair returns of the panel, or by narrowing the boundaries of their lawful function. It is said to have been the practice, in early times, to fine juries for returning verdicts against the direction of the court, even as to matter of evidence, or to summon them before the star-chamber. It seems that instances of this kind were not very numerous after the accession of Elizabeth; yet a small number occur in our books of reports. They were probably sufficient to keep juries in much awe. But after the restoration, two judges, Hyde and Keeling, successively chief-justices of the king's bench, took on them to exercise a pretended power, which had at least been intermitted in the time of the commonwealth. The grand jury of Somerset, having found a bill for manslaughter instead of murder, against the advice of the latter judge, were summoned before the court of king's bench, and dismissed with a reprimand instead of a fine. In other cases fines were set on petty juries for acquittals against the judge's direction. This unusual and dangerous inroad on so important a right attracted the notice of the house of commons; and a committee was appointed, who reported some strong resolutions against Keeling for illegal and arbitrary proceedings in his office, the last of which was, that he be brought to trial, in order to condign punishment, in such manner as the house should deem expedient. But the chief justice, having requested to be heard at the bar, so far extenuated his offence that the house, after resolving that the practice of fining or imprisoning jurors is illegal, came to a second resolution to proceed no farther against him.

§ 7. The precedents, however, which these judges endeavoured to establish, were repelled in a more decisive manner than by a resolution of the house of commons. For in two cases, where the fines thus imposed upon jurors had been entreated into the exchequer, Hale, then chief baron, with the advice of most of the judges of England, as he informs us, stayed process; and in a subsequent case it was resolved by all the judges, except one, that it was against law to fine a jury for giving a verdict contrary to the court's direction. Yet notwithstanding this very recent determination,

the recorder of London, in 1670, upon the acquittal of the quakers, Penn and Mead, on an indictment for an unlawful assembly, imposed a fine of forty marks on each of the jury. Bushell, one of their number, being committed for non-payment of this fine, sued his writ of habeas corpus from the court of common pleas; and, on the return made, that he had been committed for finding a verdict against full and manifest evidence, and against the direction of the court, chief justice Vaughan held the ground to be insufficient, and discharged the party. In his reported judgment on this occasion he maintains the practice of fining jurors, merely on this account, to be comparatively recent, and clearly against law. No later instance of it is recorded; and perhaps it can only be ascribed to the violence that still prevailed in the house of commons against nonconformists that the recorder escaped its animadversion.

In this judgment of the chief-justice Vaughan he was led to enter on a question much controverted in later times—the legal right of the jury, without the direction of the judge, to find a general verdict in criminal cases, where it determines not only the truth of the facts as deposed, but their quality of guilt or innocence; or, as it is commonly, though not perhaps quite accurately worded, to judge of the law as well as the fact. It is a received maxim with us, that the judge cannot decide on questions of fact, nor the jury on those of law. Whenever the general principle, or what may be termed the major proposition of the syllogism, which every litigated case contains, can be extracted from the particular circumstances to which it is supposed to apply, the court pronounce their own determination, without reference to a jury. The province of the latter, however, though it properly extend not to any general decision of the law, is certainly not bounded, at least in modern times, to a mere estimate of the truth of testimony. The intention of the litigant parties in civil matters, of the accused in crimes, is in every case a matter of inference from the testimony or from the acknowledged facts of the case; and wherever that intention is material to the issue, is constantly left for the jury's deliberation. Unfortunately it has been sometimes the disposition of judges to claim to themselves the absolute interpretation of facts, and the exclusive right of drawing inferences from them, as it has occasionally, though not perhaps with so much danger, been the failing of juries to make their right of returning a general verdict subservient to faction or prejudice. Vaughan did not of course mean to encourage any petulance in juries that should lead them to pronounce on the law, nor does he expatiate so largely on their power as has sometimes since been usual; but confines himself to a narrow, though conclusive, line of argument, that, as

power, which might admit of some question, is sanctioned by a declaratory clause of the present statute. Another section enacts, that "no subject of this realm that now is, or hereafter shall be, an inhabitant or resiant of this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall be sent prisoner into Scotland, Ireland, Jersey, Guernsey, Tangier, or into parts, garrisons, islands, or places beyond the seas, which are, or at any time hereafter shall be, within or without the dominions of his majesty, his heirs or successors," under penalties of the heaviest nature short of death which the law then knew, and an incapacity of receiving the king's pardon. The great rank of those who were likely to offend against this part of the statute was, doubtless, the cause of this unusual severity.

But as it might still be practicable to evade these remedial provisions by expressing some matter of treason or felony in the warrant of commitment, the judges not being empowered to inquire into the truth of the facts contained in it, a further security against any protracted detention of an innocent man is afforded by a provision of great importance—that every person committed for treason or felony, plainly and specially expressed in the warrant, may, unless he shall be indicted in the next term, or at the next sessions of general gaol delivery after his commitment, be, on prayer to the court, released upon bail, unless it shall appear that the crown's witnesses could not be produced at that time; and if he shall not be indicted and tried in the second term or sessions of gaol delivery, he shall be discharged.

The remedies of the habeas corpus act are so effectual that no man can possibly endure any long imprisonment on a criminal charge, nor would any minister venture to exercise a sort of oppression so dangerous to himself. But it should be observed that, as the statute is only applicable to cases of commitment on such a charge, every other species of restraint on personal liberty is left to the ordinary remedy as it subsisted before this enactment. Thus a party detained without any warrant must sue out his habeas corpus at common law; and this is at present the more usual occurrence. But the judges of the king's bench, since the statute, have been accustomed to issue this writ during the vacation in all cases whatsoever. A sensible difficulty has, however, been sometimes felt, from their incompetency to judge of the truth of a return made to the writ. For, though in cases within the statute the prisoner may always look to his legal discharge at the next sessions of gaol delivery, the same redress might not always be obtained when he is not in custody of a common gaoler. If the person therefore who detains any one in custody should think fit to make a return to the writ of habeas corpus, alleging matter

sufficient to justify the party's restraint, yet false in fact, there would be no means, at least by this summary process, of obtaining relief. An attempt was made in 1757, after an examination of the judges by the house of lords as to the extent and efficiency of the habeas corpus at common law, to render their jurisdiction more remedial. It failed, however, for the time, of success; but a statute was enacted towards the end of the reign of George III.,¹ which not only extends the power of issuing the writ during the vacation, in cases not within the act of Charles II., to all the judges, but enables the judge before whom the writ is returned to inquire into the truth of the facts alleged therein, and, in case they shall seem to him doubtful, to release the party in custody, on giving surety to appear in the court to which such judge shall belong, on some day in the ensuing term, when the court may examine by affidavit into the truth of the facts alleged in the return, and either remand or discharge the party, according to their discretion. It is also declared that a writ of habeas corpus shall run to any harbour or road on the coast of England, though out of the body of any county; in order, I presume, to obviate doubts as to the effects of this remedy in a kind of illegal detention, more likely perhaps than any other to occur in modern times, on board of vessels upon the coast. Except a few of this description, it is very rare for a habeas corpus to be required in any case where the government can be presumed to have an interest.

§ 9. The reign of Charles II. was hardly more remarkable by the vigilance of the house of commons against arbitrary prerogative than by the warfare it waged against whatever seemed an encroachment or usurpation in the other house of parliament. It has been a peculiar happiness of our constitution that such dissensions have so rarely occurred. This is owing, in a great measure, to the happy graduation of ranks, which renders the elder and the younger sons of our nobility two links in the unsevered chain of society; the one trained in the school of popular rights, and accustomed, for a long portion of their lives, to regard the privileges of the house whereof they form a part, full as much as those of their ancestors; the other falling without hereditary distinction into the class of other commoners, and mingling the sentiments natural to their birth and family affections with those that are more congenial to the whole community. It is owing also to the wealth and dignity of those ancient families who would be styled noble in any other country, and who give an aristocratical character to the popular part of our legislature, and to the influence which the peers themselves, through the representation of small boroughs, are enabled to exercise over the lower house.

¹ 56 G. III. c. 100.

Meantime the company had presented a petition to the house of commons against the proceedings of the lords in this business. It was referred to a committee who had already been appointed to consider some other cases of a like nature. They made a report, which produced resolutions to this effect—that the lords, in taking cognizance of an original complaint, and that relievable in the ordinary course of law, had acted illegally, and in a manner to deprive the subject of the benefit of the law. The lords in return voted that the proceedings of the house of commons were a breach of the privileges of the house of peers. The proceedings that followed were intemperate on both sides. The commons voted Skinner into custody for a breach of privilege, and resolved that whoever should be aiding in execution of the order of the lords against the East India company should be deemed a betrayer of the liberties of the commons of England, and an infringer of the privileges of the house. The lords, in return, committed sir Samuel Barnardiston, chairman of the company, and a member of the house of commons, to prison, and imposed on him a fine of 500*l*. It became necessary for the king to stop the course of this quarrel, which was done by successive adjournments and prorogations for fifteen months. But on their meeting again, in October 1669, the commons proceeded instantly to renew the dispute. In conclusion, the king recommended an erasure from the Journals of all that had passed on the subject, and an entire cessation; an expedient which both houses willingly embraced, the one to secure its victory, the other to save its honour. From this time the lords have tacitly abandoned all pretensions to an original jurisdiction in civil suits.

They have, however, been more successful in establishing a branch of their ultimate jurisdiction which had less to be urged for it in respect of precedent, that of hearing appeals from courts of equity. It is proved by sir Matthew Hale and his editor, Mr. Hargrave, that the lords did not entertain petitions of appeal before the reign of Charles I., and not perhaps unequivocally before the long parliament. They became very common from that time, though hardly more so than original suits; and, as they bore no analogy, except at first glance, to writs of error, which come to the house of lords by the king's express commission under the great seal, could not well be defended on legal grounds. But, on the other hand, it was reasonable that the vast power of the court of chancery should be subject to some control; and if the ultimate jurisdiction of the peerage were convenient and salutary in cases of common law, it was difficult to assign any satisfactory reason why it should be less so in those which are technically denominated equitable. Nor is it likely that the commons would have disputed this usurpation, in which the crown had acquiesced, if the lords had not reced-

appeals against members of the other house. Three instances of this took place about the year 1675 ; but that of Shirley against sir John Fagg is the most celebrated, as having given rise to a conflict between the two houses as violent as that which had occurred in the business of Skinner. It began altogether on the score of privilege. As members of the house of commons were exempted from legal process during the session, by the general privilege of parliament, they justly resented the pretension of the peers to disregard this immunity, and compel them to appear as respondents in cases of appeal. In these contentions neither party could evince its superiority but at the expense of innocent persons. It was a contempt of the one house to disobey its order, of the other to obey it. Four counsel, who had pleaded at the bar of the lords in one of the cases where a member of the other house was concerned, were taken into custody of the serjeant-at-arms by the speaker's warrant. The gentleman usher of the black rod, by warrant of the lords, empowering him to call all persons necessary to his assistance, set them at liberty. The commons apprehended them again ; and, to prevent another rescue, sent them to the Tower. The lords despatched their usher of the black rod to the lieutenant of the Tower, commanding him to deliver up the said persons. He replied that they were committed by order of the commons, and he could not release them without their order ; just as, if the lords were to commit any person, he could not release him without their lordships' order. They addressed the king to remove the lieutenant ; but, after some hesitation, he declined to comply with their desire. In this difficulty they had recourse, instead of the warrant of the lords' speaker, to a writ of habeas corpus returnable in parliament ; a proceeding not usual, but the legality of which seems to be now admitted. The lieutenant of the Tower, who, rather unluckily for the lords, had taken the other side, either out of conviction or from a sense that the lower house were the stronger and more formidable, instead of obeying the writ, came to the bar of the commons for directions. They voted, as might be expected, that the writ was contrary to law and the privileges of their house. But, in this ferment of two jealous and exasperated assemblies, it was highly necessary, as on the former occasion, for the king to interpose by a prorogation for three months. This period, however, not being sufficient to allay their animosity, the house of peers took up again the appeal of Shirley in their next session. Fresh votes and orders of equal intemperance on both sides ensued, till the king by the long prorogation from November 1675 to February 1677, put an end to the dispute. The particular appeal of Shirley was never revived ; but the lords continued without objection to ^{the general} jurisdiction over appeals from courts of equity ^{disor}

Hale's Treatise on the Jurisdiction of the Lords expresses some degree of surprise at the commons' acquiescence in what they had treated as an usurpation. But it is evident from the whole course of proceeding that it was the breach of privilege in citing their own members to appear which excited their indignation.

§ 13. During the interval between these two dissensions, which the suits of Skinner and Shirley engendered, another difference had arisen, somewhat less violently conducted, but wherein both houses considered their essential privileges at stake. This concerned the long-agitated question of the right of the lords to make alterations in money-bills. Though I cannot but think the importance of their exclusive privilege has been rather exaggerated by the house of commons, it deserves attention; more especially as the embers of that fire may not be so wholly extinguished as never again to show some traces of its heat.

In our earliest parliamentary records the lords and commons, summoned in a great measure for the sake of relieving the king's necessities, appear to have made their several grants of supply without mutual communication, and the latter generally in a higher proportion than the former. These were not in the form of laws, nor did they obtain any formal assent from the king, to whom they were tendered in written indentures, entered afterwards on the roll of parliament. The latest instance of such distinct grants from the two houses, as far as I can judge from the rolls, is in the 18th year of Edward III. But in the 22nd year of that reign the commons alone granted three-fifteenths of their goods, in such a manner as to show beyond a doubt that the tax was to be levied solely upon themselves. After this time the lords and commons are jointly recited in the rolls to have granted them, sometimes, as it is expressed, upon deliberation had together. In one case it is said that the lords, with one assent, and afterwards the commons, granted a subsidy on exported wool. A change of language is observable in Richard II.'s reign, when the commons are recited to grant with the assent of the lords; and this seems to indicate, not only that in practice the vote used to originate with the commons, but that their proportion, at least, of the tax being far greater than that of the lords (especially in the usual impositions on wool and skins, which ostensibly fell on the exporting merchant), the grant was to be deemed mainly theirs, subject only to the assent of the other house of parliament. This is, however, so explicitly asserted in a remarkable passage on the roll of 9 Hen. IV., without any apparent denial, that it cannot be called in question by any one.² The language of the rolls continues to be the same in the

² Rot. Parl. iii. 611 Students' History of the Middle Ages, p. 442.

following reigns; the commons are the granting, the lords the consenting power.

These grants continued to be made as before, by the consent indeed of the houses of parliament, but not as legislative enactments. Most of the few instances where they appear among the statutes are where some condition is annexed, or some relief of grievances so interwoven with them that they make part of a new law. In the reign of Henry VII. they are occasionally inserted among the statutes, though still without any enacting words. In that of Henry VIII. the form is rather more legislative, and they are said to be enacted by the authority of parliament. The lords and commons are sometimes both said to grant, but more frequently the latter with the former's assent, as continued to be the case through the reigns of Elizabeth and James I. In the first parliament of Charles I. the commons began to omit the name of the lords in the preamble of bills of supply, reciting the grant as if wholly their own, but in the enacting words adopted the customary form of statutes. This, though once remonstrated against by the upper house, has continued ever since to be the practice.

The originating power as to taxation was thus indubitably placed in the house of commons; nor did any controversy arise upon that ground. But they maintained also that the lords could not make any amendment whatever in bills sent up to them for imposing, directly or indirectly, a charge upon the people. There seems no proof that any difference between the two houses on this score had arisen before the Restoration; and in the convention parliament the lords made several alterations in undoubted money-bills, to which the commons did not object. But in 1661, the lords having sent down a bill for paving the streets of Westminster, to which they desired the concurrence of the commons, the latter, on reading the bill a first time, "observing that it went to lay a charge upon the people, and conceiving that it was a privilege inherent in their house that bills of that nature should be first considered there," laid it aside, and caused another to be brought in. When this was sent up to the lords, they inserted a clause to which the commons disagreed, as contrary to their privileges, "because the people cannot have any tax or charge imposed upon them, but originally by the house of commons. The lords resolved this assertion of the commons to be against the inherent privileges of the house of peers; and the present bill was defeated by the unwillingness of either party to recede. In April 1671, the lords having reduced the amount of an imposition on sugar, it was resolved by the other house, "That, in all aids given to the king by the commons, the rate or tax ought not to be altered by the lords." This brought on several conferences between the houses, wherein the limits of the

exclusive privilege claimed by the commons were discussed with considerable ability, but, as I cannot help thinking, with a decided advantage both as to precedent and constitutional analogy on the side of the peers. If the commons, as in early times, had merely granted their own money, it would be reasonable that their house should have, as it claimed to have, "a fundamental right as to the matter, the measure, and the time." But that the peers, subject to the same burthens as the rest of the community, and possessing no trifling proportion of the general wealth, should have no other alternative than to refuse the necessary supplies of the revenue, or to have their exact proportion, with all qualifications and circumstances attending their grant, presented to them unalterably by the other house of parliament, was an anomaly that could hardly rest on any other ground of defence than such a series of precedents as establish a constitutional usage; while, in fact, it could not be made out that such a pretension was ever advanced by the commons before the present parliament.

§ 14. There seems to be still less pretext for the great extension given by the commons to their acknowledged privilege of originating bills of supply. The principle was well adapted to that earlier period when security against misgovernment could only be obtained by the vigilant jealousy and uncompromising firmness of the commons. They came to the grant of subsidy with real or feigned reluctance, as the stipulated price of redress of grievances. They considered the lords, generally speaking, as too intimately united with the king's ordinary council, which indeed sat with them, and had, perhaps as late as Edward III.'s time, a deliberative voice. They knew the influence or intimidating ascendancy of the peers over many of their own members. It may be doubted in fact whether the lower house shook off, absolutely and permanently, all sense of subordination, or at least deference, to the upper, till about the close of the reign of Elizabeth. But I must confess that, when the wise and ancient maxim, that the commons alone can empower the king to levy the people's money, was applied to a private bill for lighting and cleansing a certain town, or cutting dikes in a fen, to local and limited assessments for local benefit (as to which the crown has no manner of interest, nor has anything to do with the collection), there was more disposition shown to make encroachments than to guard against those of others. They began soon after the revolution to introduce a still more extraordinary construction of their privilege, not receiving from the house of lords any bill which imposes a pecuniary penalty on offenders, nor permitting them to alter the application of such as had been imposed below.³

³ The principles laid down by Hatsell can make no alteration but to correct are: 1. That in bills of supply the lords verbal mistakes. 2. That in bills, not of

These restrictions upon the other house of parliament, however, are now become, in their own estimation, the standing privileges of the commons. Several instances have occurred during the last century, though not, I believe, very lately, when bills, chiefly of a private nature, have been unanimously rejected, and even thrown over the table by the speaker, because they contained some provision in which the lords had trespassed upon these alleged rights. They are, as may be supposed, very differently regarded in the neighbouring chamber. The lords have never acknowledged any further privilege than that of originating bills of supply. But the good sense of both parties, and of an enlightened nation, who must witness and judge of their disputes, as well as the natural desire of the government to prevent in the outset any altercation that must impede the course of its measures, have rendered this little jealousy unproductive of those animosities which it seemed so happily contrived to excite. The one house, without admitting the alleged privilege, has generally been cautious not to give a pretext for eagerly asserting it; and the other, on trifling occasions where it has seemed, perhaps unintentionally, to be infringed, has commonly resorted to the moderate course of passing a fresh bill to the same effect, after satisfying its dignity by rejecting the first.

§ 15. It may not be improper to choose the present occasion for a summary view of the constitution of both houses of parliament under the lines of Tudor and Stuart. Of their earlier history the reader may find a brief and not, I believe, very incorrect account, in a work to which this is a kind of sequel.

The number of temporal lords summoned by writ to the parliaments of the house of Plantagenet was exceedingly various; nor was anything more common in the fourteenth century than to omit those who had previously sat in person, and still more their descendants. They were rather less numerous, for this reason; under the line of Lancaster, when the practice of summoning those who were not hereditary peers did not so much prevail as in the preceding reigns. Fifty-three names, however, appear in the parliament of 1454, the last held before the commencement of

absolute supply, yet imposing burthens, as turnpike acts, &c., the lords cannot alter the quantum of the toll, the persons to manage it, &c.; but in other clauses they may make amendments. 3. That where a charge may indirectly be thrown on the people by a bill, the commons object to the lords making amendments. 4. That the lords cannot insert pecuniary penalties in a bill, or alter those inserted by the commons. iii. 137. He seems to

boast that the lords during the last century have very faintly opposed the claim of the commons. But surely they have sometimes done so in practice by returning a money-bill, or what the lower house call one, amended; and the commons have had recourse to the evasion of throwing out such bill, and bringing in another with the amendments inserted in it, which does not look very triumphant.

the great contest between York and Lancaster. In this troublous period of above thirty years, if the whole reign of Edward IV. is to be included, the chiefs of many powerful families lost their lives in the field or on the scaffold, and their honours perished with them by attainder. New families, adherents of the victorious party, rose in their place; and sometimes an attainder was reversed by favour so that the peers of Edward's reign were not much fewer than the number I have mentioned. Henry VII. summoned but 29 to his first parliament, including some whose attainder had never been judicially reversed; a plain act of violence, like his previous usurpation of the crown. In his subsequent parliaments the peerage was increased by fresh creations, but never much exceeded 40. The greatest number summoned by Henry VIII. was 51; which continued to be nearly the average in the two next reigns, and was very little augmented by Elizabeth. James, in his thoughtless profusion of favour, made so many new creations, that 82 peers sat in his first parliament, and 96 in his latest. From a similar facility in granting so cheap a reward of service, and in some measure perhaps from the policy of counteracting a spirit of opposition to the court, which many of the lords had begun to manifest, Charles called no less than 117 peers to the parliament of 1628, and 119 to that of November, 1640. Many of these honours were sold by both these princes; a disgraceful and dangerous practice, unheard of in earlier times, by which the princely peerage of England might have been gradually levelled with the herd of foreign nobility. This has, occasionally, though rarely, been suspected since the Restoration. In the parliament of 1661 we find 139 lords summoned.

The spiritual lords, who, though forming another estate in parliament, have always been so united with the temporality that the suffrages of both upon every question are told indistinctly and numerically, composed in general, before the Reformation, a majority of the upper house; though there was far more irregularity in the summonses of the mitred abbots and priors than those of the barons. But by the surrender and dissolution of the monasteries, about thirty-six votes of the clergy on an average were withdrawn from the parliament; a loss ill compensated to them by the creation of five new bishoprics. Thus, the number of the temporal peers being continually augmented, while that of the prelates was confined to 26, the direct influence of the church on the legislature has become comparatively small; and that of the crown, which, by the pernicious system of translations and other means, is generally powerful with the episcopal bench, has, in this respect at least, undergone some diminution. It is easy to perceive from this view of the case that the destruction of the monasteries,

as they then stood, was looked upon as an indispensable preliminary to the Reformation; no peaceable efforts towards which could have been effectual without altering the relative proportions of the spiritual and temporal aristocracy.

The house of lords, during this period of the sixteenth and seventeenth centuries, were not supine in rendering their collective and individual rights independent of the crown. It became a fundamental principle, according indeed to ancient authority, though not strictly observed in ruder times, that every peer of full age is entitled to his writ of summons at the beginning of a parliament, and that the house will not proceed on business if any one is denied it. The privilege of voting by proxy, which was originally by special permission of the king, became absolute, though subject to such limitations as the house itself may impose. The writ of summons, which, as I have observed, had in earlier ages (if usage is to determine that which can rest on nothing but usage) given only a right of sitting in the parliament for which it issued, was held, about the end of Elizabeth's reign, by a construction founded on later usage, to convey an inheritable peerage, which was afterwards adjudged to descend upon heirs general, female as well as male; an extension which sometimes raises intricate questions of descent, and, though no materially bad consequences have flowed from it, is perhaps one of the blemishes in the constitution of parliament. Doubts whether a peerage could be surrendered to the king, and whether a territorial honour, of which hardly any remain, could be alienated along with the land on which it depended, were determined in the manner most favourable to the dignity of the aristocracy. They obtained also an important privilege; first of recording their dissent in the journals of the house, and afterwards of inserting the grounds of it. Instances of the former occur not unfrequently at the period of the Reformation: but the latter practice was little known before the long parliament. A right that Cato or Phocion would have prized, though it may sometimes have been frivolously or factiously exercised!

§ 16. The house of commons, from the earliest records of its regular existence in the 23rd year of Edward I., consisted of 74 knights, or representatives from all the counties of England, except Chester, Durham, and Monmouth, and of a varying number of deputies from the cities and boroughs; sometimes, in the earliest period of representation, amounting to as many as 260; sometimes, by the negligence or partiality of the sheriffs in omitting places that had formerly returned members, to not more than two-thirds of that number. New boroughs, however, as being grown into importance, or from some private motive, acquired the franchise of election; and at the accession of Henry VIII. we find 224 citizens

and burgesses from 111 towns (London sending four), none of which have since intermitted their privilege.

The change which appears to have taken place in the English government towards the end of the thirteenth century was founded upon the maxim that all who possessed landed or moveable property ought, as freemen, to be bound by no laws, and especially by no taxation, to which they had not consented through their representatives. If we look at the constituents of a house of commons under Edward I. or Edward III., and consider the state of landed tenures and of commerce at that period, we shall perceive that, excepting women, who have generally been supposed capable of no political right but that of reigning, almost every one who contributed towards the tenths and fifteenths granted by the parliament might have exercised the franchise of voting for those who sat in it. I do not pretend that no one was contributory to a subsidy who did not possess a vote, but that the far greater portion was levied on those who, as freeholders or burgesses, were reckoned in law to have been consenting to its imposition. It would be difficult probably to name any town of the least consideration in the fourteenth and fifteenth centuries which did not, at some time or other, return members to parliament. This is so much the case that if, in running our eyes along the map, we find any seaport, as Sunderland or Falmouth, or any inland town, as Leeds or Birmingham, which had never enjoyed the elective franchise, we may conclude at once that it has emerged from obscurity since the reign of Henry VIII.⁴

Though scarce any considerable town, probably, was intentionally left out, except by the sheriff's partiality, it is not to be supposed that all boroughs that made returns were considerable. Several that are currently said to be decayed were never much better than at present. Some of these were the ancient demesne of the crown; the tenants of which, not being suitors to the county courts, not voting in the election of knights for the shire, were, still on the same principle of consent to public burthens, called upon to send their own representatives. Others received the privilege along with their charter of incorporation, in the hope that they would thrive more than proved to be the event; and possibly, even in such early times, the idea of obtaining influence in the common, through the votes of their burgesses might sometimes suggest itself.

That, amidst all this care to secure the positive right of representation, so little provision should have been made as to its relative

* Though the proposition in the text is, I believe, generally true, it has occurred to me since that there are some

exceptions in the northern parts of England; and that both Shalfield and Manchester are among them.

efficiency, that the high-born and opulent gentry should have been so vastly outnumbered by peddling traders, that the same number of two should have been deemed sufficient for the counties of York and Rutland, for Bristol and Gatton, are facts more easy to wonder at than to explain; for though the total ignorance of the government as to the relative population might be perhaps a sufficient reason for not making an attempt at equalization, yet, if the representation had been founded on anything like a numerical principle, there would have been no difficulty in reducing it to the proportion furnished by the books of subsidy for each county and borough, or at least in a rude approximation towards a more rational distribution.

Henry VIII. gave a remarkable proof that no part of the kingdom, subject to the English laws and parliamentary burthens, ought to want its representation, by extending the right of election to the whole of Wales, the counties of Chester and Monmouth, and even the towns of Berwick and Calais. It might be possible to trace the reason why the county of Durham was passed over. The attachment of those northern parts to popery seems as likely as any other. Thirty-three were thus added to the commons. Edward VI. created fourteen boroughs, and restored ten that had disused their privilege. Mary added twenty-one, Elizabeth sixty, and James twenty-seven members.

These accessions to the popular chamber of parliament after the reign of Henry VIII. were by no means derived from a popular principle, such as had influenced its earlier constitution. We may account perhaps on this ground for the writs addressed to a very few towns, such as Westminster. But the design of that great influx of new members from petty boroughs, which began in the short reigns of Edward and Mary, and continued under Elizabeth, must have been to secure the authority of government, especially in the successive revolutions of religion. Five towns only in Cornwall made returns at the accession of Edward VI.; twenty-one at the death of Elizabeth. It will not be pretended that these wretched villages were seats of commerce and industry in the sixteenth century. But the county of Cornwall was more immediately subject to a coercive influence, through the indefinite and oppressive jurisdiction of the stannary court. Similar motives, if we could discover the secrets of those governments, doubtless operated in most other cases. A slight difficulty seems to have been raised in 1563 about the introduction of representatives from eight new boroughs at once by charters from the crown, but was soon waived with the complaisance usual in those times. Many of the towns which had abandoned their privilege at a time when they were compelled to the payment of daily wages to their members during the session, were now desirous of recovering it when that

burthen had ceased and the franchise had become valuable. And the house, out of favour to popular rights, laid it down in the reign of James I. as a principle, that every town which has at any time returned members to parliament is entitled to a writ as a matter of course. The speaker accordingly issued writs to Hertford, Poinfret, Ilchester, and some other places, on their petition. The restorations of boroughs in this manner, down to 1641, are fifteen in number. Charles I., whose temper inspired him rather with a systematic abhorrence of parliaments than with any notion of managing them by influence, created no new boroughs. The right indeed would certainly have been disputed, however frequently exercised. In 1673 the county and city of Durham, which had strangely been unrepresented to so late an era, were raised by act of parliament to the privileges of their fellow-subjects. About the same time a charter was granted to the town of Newark, enabling it to return two burgesses. It passed with some little objection at the time; but four years afterwards, after two debates, it was carried on the question, by 125 to 73, that, by virtue of the charter granted to the town of Newark, it hath right to send burgesses to serve in parliament. Notwithstanding this apparent recognition of the king's prerogative to summon burgesses from a town not previously represented, no later instance of its exercise has occurred; and it would unquestionably have been resisted by the commons, not, as is vulgarly supposed, because the act of union with Scotland has limited the English members to 513 (which is not the case), but upon the broad maxims of exclusive privilege in matters relating to their own body, which the house was become powerful enough to assert against the crown.

§ 17. It is doubtless a problem of no inconsiderable difficulty to determine with perfect exactness by what class of persons the elective franchise in ancient boroughs was originally possessed. The different opinions on this controverted question may be reduced to the four following theses:—1. The original right, as enjoyed by boroughs represented in the parliaments of Edward I., and all of later creation, where one of a different nature has not been expressed in the charter from which they derive the privilege, was in the inhabitant householders resident in the borough, and paying scot and lot; under those words including local rates, and probably general taxes. 2. The right sprang from the tenure of certain freehold lands or burgages within the borough, and did not belong to any but such tenants. 3. It was derived from charters of incorporation, and belonged to the community or freemen of the corporate body. 4. It did not extend to the generality of freemen, but was limited to the governing part or municipal magistracy.

Of these propositions the first was laid down by a celebrated

committee of the house of commons in 1624, the chairman whereof was serjeant Glanville, and the members, as appears by the list in the Journals, the most eminent men, in respect of legal and constitutional knowledge, that were ever united in such a body. It is called by them the common-law right, and that which ought always to obtain where prescriptive usage to the contrary cannot be shown. But it has met with very little favour from the house of commons since the Restoration. The second has the authority of lord Holt in the case of Ashby and White, and of some other lawyers who have turned their attention to the subject. It countenances what is called the right of burgage tenure; the electors in boroughs of this description being such as hold burgages or ancient tenements within the borough. The next theory, which attaches the primary franchise to the freemen of corporations, has on the whole been most received in modern times, if we look either at the decisions of the proper tribunal, or the current doctrine of lawyers. The last proposition is that of Dr. Brady, who, in a treatise of boroughs, written to serve the purposes of James II., though not published till after the Revolution, endeavoured to settle all elective rights on the narrowest and least popular basis. This work gained some credit, which its perspicuity and acuteness would deserve, if these were not disgraced by a perverse sophistry and suppression of truth.⁵

⁵ It is unnecessary now to discuss these propositions, as the Reform bills of 1832 and 1867 have of course rendered a disquisition on the ancient rights of election in boroughs a matter of merely historical interest.

CHAPTER XIV.

THE REIGN OF JAMES II.

§ 1. Designs of the King. § 2. Parliament of 1685. § 3. King's Intention to repeal the Test Act. § 4. Deceived as to the Dispositions of his Subjects. § 5. First period of his reign. Prorogation of Parliament. § 6. Second period of his reign. § 7. Dispensing Power confirmed by the Judges. § 8. Ecclesiastical Commission. § 9. King's Scheme of establishing Popery. § 10. Dismissal of Lord Rochester. § 11. Prince of Orange alarmed. Plan of setting the Princess aside. Rejected by the King. Overtures of the Malcontents to Prince of Orange. § 12. Declaration for Liberty of Conscience. § 13. Addresses in favour of it. § 14. New Modelling of the Corporations. § 15. Affair of Magdalen College. § 16. Infatuation of the King. § 17. His Coldness towards Louis. § 18. Invitation signed to the Prince of Orange. Birth of Prince of Wales. § 19. Justice and Necessity of the Revolution. § 20. Favourable Circumstances attending it. § 21. Its Salutary Consequences. § 22. Proceedings of the Convention. § 23. Ended by the Elevation of William and Mary to the Throne.

§ 1. *THE question concerning the right and usage of election in boroughs, was perhaps of less practical importance in the reign of Charles II. than we might at first imagine. Whoever might be the legal electors, it is undoubted that a great preponderance was virtually lodged in the select body of corporations. It was the knowledge of this that produced the corporation act soon after the Restoration, to exclude the presbyterians, and the more violent measures of quo warranto at the end of Charles's reign. If by placing creatures of the court in municipal offices, or by intimidating the former corporators through apprehensions of forfeiting their common property and lucrative privileges, what was called a loyal parliament could be procured, the business of government, both as to supply and enactment or repeal of laws, would be carried on far more smoothly and with less scandal than by their entire disuse. Few of those who assumed the name of tories were prepared to sacrifice the ancient fundamental forms of the constitution. They thought it equally necessary that a parliament should exist, and that it should have no will of its own, or none, at least, except for the preservation of that ascendancy of the established religion which even their loyalty would not consent to surrender.*

It is not easy to determine whether James II. had resolved to complete his schemes of arbitrary government by setting aside even the nominal concurrence of the two houses of Parliament in legislative enactments, and especially in levying money on his subjects. He could hardly avoid perceiving that the constant acquiescence of

establishing a power so nearly despotic, that neither the privileges of parliament, nor much less those of private men, would have stood in his way. The prejudice which the two last Stuarts had acquired in favour of the Roman religion, so often deplored by thoughtless or insidious writers as one of the worst consequences of their father's ill fortune, is to be accounted rather among the most signal links in the chain of causes through which a gracious Providence has favoured the consolidation of our liberties and welfare. Nothing less than a motive more universally operating than the interests of civil freedom would have stayed the compliant spirit of this unworthy parliament, or rallied, for a time at least, the supporters of indefinite prerogative under a banner they abhorred. We know that the king's intention was to obtain the repeal of the habeas corpus act, a law which he reckoned as destructive of monarchy as the test was of the catholic religion. And I see no reason to suppose that he would have failed of this, had he not given alarm to his high-church parliament by a premature manifestation of his design to fill the civil and military employments with the professors of his own mode of faith.

§ 3. It has been doubted by Mr. Fox whether James had, in this part of his reign, conceived the projects commonly imputed to him, of overthrowing, or injuring by any direct acts of power, the protestant establishment of this kingdom. It is probable that nothing farther was intended than to emancipate the Roman catholics from the severe restrictions of the penal laws, securing the public exercise of their worship from molestation, and to replace them upon an equality as to civil offices by abrogating the test act of the late reign. The king would rely on the intrinsic excellence of his own religion, and still more on the temptations that his favour would hold out. For the repeal of the test would not have placed the two religions on a fair level. Catholics, however little qualified, would have filled, as in fact they did under the dispensing power, most of the principal stations in the court, law, and army. The king told Barillon he was well enough acquainted with England to be assured that the admissibility to office would make more catholics than the right of saying mass publicly. There was, on the one hand, a prevailing laxity of principle in the higher ranks, and a corrupt devotedness to power for the sake of the emoluments it could dispense, which encouraged the expectation of such a nominal change in religion as had happened in the sixteenth century. And, on the other, much was hoped by the king from the church itself. He had separated from her communion in consequence of the arguments which her own divines had furnished; he had conversed with men bred in the school of Laud; and was slow to believe that the conclusions which he had, not perhaps unreasonably, derived

from the semi-protestant theology of his father's reign, would not appear equally irresistible to all minds when free from the danger and obloquy that had attended them. Thus, by a voluntary return of the clergy and nation to the bosom of the catholic church, he might both obtain an immortal renown, and secure his prerogative against that religious jealousy which had always been the aliment of political factions. Till this revolution, however, could be brought about, he determined to court the church of England, whose boast of exclusive and unlimited loyalty could hardly be supposed entirely hollow, in order to obtain the repeal of the penal laws and disqualifications which affected that of Rome. And though the maxims of religious toleration had been always in his mouth, he did not hesitate to propitiate her with the most acceptable sacrifice, the persecution of nonconforming ministers. He looked upon the dissenters as men of republican principles; and if he could have made his bargain for the free exercise of the catholic worship, I see no reason to doubt that he would never have announced his general indulgence to tender consciences.

§ 4. But James had taken too narrow a view of the mighty people whom he governed. The laity of every class, the tory gentleman almost equally with the presbyterian artisan, entertained an inveterate abhorrence of the Romish superstition. This was of course enhanced by the insolent and injudicious confidence of the Romish faction, especially the priests, in their demeanour, their language, and their publications. Meanwhile a considerable change had been wrought in the doctrinal system of the Anglican church since the Restoration. The men most conspicuous in the reign of Charles II. for their writings, and for their argumentative eloquence in the pulpit, were of the class who had been denominated Latitudinarian divines; and, while they maintained the principles of the Remonstrants in opposition to the school of Calvin, were powerful and unequivocal supporters of the protestant cause against Rome. They made none of the dangerous concessions which had shaken the faith of the duke and duchess of York; they regretted the disuse of no superstitious ceremony; they denied not the one essential characteristic of the Reformation, the right of private judgment; they avoided the mysterious jargon of a real presence in the Lord's Supper. Thus such an agreement between the two churches as had been projected at different times was become far more evidently impracticable, and the separation more broad and defined. These men, as well as others who do not properly belong to the same class, were now distinguished by their courageous and able defences of the Reformation. The victory, in the judgment of the nation, was wholly theirs. Rome had indeed
 but such as it would have been more honourable

The people heard sometimes with indignation, or rather with contempt, that an unprincipled minister, a temporising bishop, or a licentious poet, had gone over to the side of a monarch who made conformity with his religion the only certain path to his favour.

§ 5. The short period of a four years' reign may be divided by several distinguishing points of time, which make so many changes in the posture of government. From the king's accession to the prorogation of parliament on November 30, 1685, he had acted apparently in concurrence with the same party that had supported him in his brother's reign, of which his own seemed the natural and almost undistinguishable continuation. This party, which had become incomparably stronger than the opposite, had greeted him with such unbounded professions, the temper of its representatives had been such in the first session of parliament, that a prince less obstinate than James might have expected to succeed in attaining an authority which the nation seemed to offer. A rebellion speedily and decisively quelled confirms every government; it seemed to place his own beyond hazard. Could he have been induced to change the order of his designs, and accustom the people to a military force, and to a prerogative of dispensing with statutes of temporal concern, before he meddled too ostensibly with their religion, he would possibly have gained both the objects of his desire. Even conversions to popery might have been more frequent, if the gross solicitations of the court had not made them dishonourable. But, neglecting the hint of a prudent adviser, that the death of Monmouth left a far more dangerous enemy behind, he suffered a victory that might have insured him success to inspire an arrogant confidence that led on to destruction. Master of an army, and determined to keep it on foot, he naturally thought less of a good understanding with parliament. He had already rejected the proposition of employing bribery among the members, an expedient very little congenial to his presumptuous temper and notions of government. They were assembled, in his opinion, to testify the nation's loyalty, and thankfulness to their gracious prince for not taking away their laws and liberties. But, if a factious spirit of opposition should once prevail, it could not be his fault if he dismissed them till more becoming sentiments should again gain ground. Hence he did not hesitate to prorogue, and eventually to dissolve, the most compliant house of commons that had been returned since his family had sat on the throne, at the cost of 700,000*l.*, a grant of supply which thus fell to the ground, rather than endure any opposition on the subject of the test and penal laws. Yet, from the strength of the court in all divisions, it must seem not improbable to us that he might, by the usual means of

management, have carried both of those favourite measures, at least through the lower house of parliament. For the crown lost the most important division only by one vote, and had in general a majority. The very address about unqualified officers, which gave the king such offence as to bring on a prorogation, was worded in the most timid manner; the house having rejected unanimously the words first inserted by their committee, requesting that his majesty would be pleased not to continue them in their employments, for a vague petition that "he would be graciously pleased to give such directions that no apprehensions or jealousies may remain in the hearts of his majesty's good and faithful subjects."

§ 6. The second period of this reign extends from the prorogation of parliament to the dismissal of the earl of Rochester from the treasury in 1686. During this time James, exasperated at the reluctance of the commons to acquiesce in his measures, and the decisive opposition of the church, threw off the half restraint he had imposed on himself; and showed plainly that, with a bench of judges to pronounce his commands, and an army to enforce them, he would not suffer the mockery of constitutional limitations to stand any longer in his way. Two important steps were made this year towards the accomplishment of his designs, by the judgment of the court of king's bench in the case of sir Edward Hales, confirming the right of the crown to dispense with the test act, and by the establishment of the new ecclesiastical commission.

§ 7. The kings of England, if not immemorially, yet from a very early era in our records, have exercised a prerogative unquestioned by parliament, and recognised by courts of justice, that of granting dispensations from the prohibitions and penalties of particular laws. The language of ancient statutes was usually brief and careless, with few of those attempts to regulate prospective contingencies, which, even with our pretended modern caution, are so often imperfect; and, as the sessions were never regular, sometimes interrupted for several years, there was a kind of necessity, or great convenience, in deviating occasionally from the rigour of a general prohibition; more often perhaps some motive of interest or partiality would induce the crown to infringe on the legal rule. This dispensing power, however, grew up, as it were, collaterally to the sovereignty of the legislature, which it sometimes appeared to overshadow. It was, of course, asserted in large terms by councillors of state, and too frequently by the interpreters of law. Lord Coke, before he had learned the bolder tone of his declining years, lays it down, that no act of parliament can bind the king from any prerogative which is inseparable from his person, so that he may not dispense with it by a non obstante; such is his sovereign power to command any of his subjects to serve him for the public weal,

their meetings, and the violence with which he acted in all their transactions on record, seem to point him out as its great promoter. though it is true that, at a later period, Jefferies seems to have perceived the destructive indiscretion of the popish counsellors. It displayed the king's change of policy and entire separation from that high-church party to whom he was indebted for the throne, since the manifest design of the ecclesiastical commission was to bridle the clergy, and silence the voice of protestant zeal. The proceedings against the bishop of London, and other instances of hostility to the established religion, are well known.

§ 9. Elated by success and general submission, exasperated by the reluctance and dissatisfaction of those on whom he had relied for an active concurrence with his desires, the king seems at least by this time to have formed the scheme of subverting, or impairing so far as possible, the religious establishment. He told Barillon, alluding to the ecclesiastical commission, that God had permitted all the statutes which had been enacted against the catholic religion to become the means of its re-establishment. But the most remarkable evidence of this design was the collation of Massey, a recent convert, to the deanery of Christ Church, with a dispensation from all the statutes of uniformity and other ecclesiastical laws, so ample that it made a precedent, and such it was doubtless intended to be, for bestowing any benefices upon members of the church of Rome. This dispensation seems to have been not generally known at the time.

§ 10. A deeper impression was made by the dismissal of Rochester from his post of lord treasurer; so nearly consequent on his positive declaration of adherence to the protestant religion, after the dispute held in his presence at the king's particular command, between divines of both persuasions, that it had much the appearance of a resolution taken at court to exclude from the high offices of the state all those who gave no hope of conversion. Clarendon had already given way to Tyrconnel in the government of Ireland; the privy seal was bestowed on a catholic peer, lord Arundel; lord Bellasis, of the same religion, was now placed at the head of the commission of the treasury; Sunderland, though he did not yet cease to conform, made no secret of his pretended change of opinion; the council-board, by virtue of the dispensing power, was filled with those who would refuse the test; a small junto of catholics, with father Petre, the king's confessor, at their head, took the management of almost all affairs upon themselves; men whose known want of principle gave reason to expect their compliance were raised to bishoprics; there could be no rational doubt of a concerted scheme to depress and discountenance the established church. The dismissal of Rochester, who had gone great lengths to preserve his power and emoluments, and would in all probability have concurred

in the establishment of arbitrary power under a protestant sovereign, may be reckoned the most unequivocal evidence of the king's intentions; and from thence we may date the decisive measures that were taken to counteract them.

§ 11. It was, I do not merely say the interest, but the clear right and bounden duty, of the prince of Orange to watch over the internal politics of England, on account of the near connexion which his own birth and his marriage with the presumptive heir had created. He had, in fact, a stronger motive for watching the councils of his father-in-law than has generally been known. The king was, at his accession, in his fifty-fifth year, and had no male children; nor did the queen's health give much encouragement to expect them. A scheme was formed early in the king's reign to exclude the princess of Orange from the succession in favour of her sister Anne, in the event of the latter's conversion to the Romish faith. The French ministers at our court, Barillon and Bonrepos, gave ear to this hardy intrigue. They flattered themselves that both Anne and her husband were favourably disposed. But in this they were wholly mistaken. No one could be more unconquerably fixed in her religion than that princess. The king himself, when the Dutch ambassador, Van Citters, laid before him a document, probably drawn up by some catholics of his court, in which these audacious speculations were developed, declared his indignation at so criminal a project. It was not even in his power, he let the prince afterwards know by a message, or in that of parliament, according to the principles which had been maintained in his own behalf, to change the fundamental order of succession to the crown. Nothing indeed can more forcibly paint the desperation of the popish faction than their entertainment of so preposterous a scheme. But it naturally increased the solicitude of William about the intrigues of the English cabinet. It does not appear that any direct overtures were made to the prince of Orange, except by a very few malecontents, till the embassy of Dykvelt from the States in the spring of 1687. It was William's object to ascertain, through that minister, the real state of parties in England. Such assurances as he carried back to Holland gave encouragement to an enterprise that would have been equally injudicious and unwarrantable without them. Danby, Halifax, Nottingham, and others of the tory as well as whig factions, entered into a secret correspondence with the prince of Orange; some from a real attachment to the constitutional limitations of monarchy; some from a conviction that, without open apostasy from the protestant faith, they could never obtain from James the prizes of their ambition. This must have been the predominant motive with Lord Churchill, who never gave any proof of solicitude about civil liberty; and his influence taught the princess

Anne to distinguish her interests from those of her father. It was about this time also that even Sunderland entered upon a mysterious communication with the prince of Orange; but whether he afterwards served his present master only to betray him, as has been generally believed, or sought rather to propitiate, by clandestine professions, one who might in the course of events become such, is not perhaps what the evidence already known to the world will enable us to determine.

§ 12. The dismissal of Rochester was followed up, at no great distance of time, by the famous declaration for liberty of conscience, suspending the execution of all penal laws concerning religion, and freely pardoning all offences against them, in as full a manner as if each individual had been named. He declared also his will and pleasure that the oaths of supremacy and allegiance, and the several tests enjoined by statutes of the late reign, should no longer be required of any one before his admission to offices of trust. The motive of this declaration was not so much to relieve the Roman catholics from penal and incapacitating statutes (which, since the king's accession and the judgment of the court of king's bench in favour of Hales, were virtually at an end), as, by extending to the protestant dissenters the same full measure of toleration, to enlist under the standard of arbitrary power those who had been its most intrepid and steadiest adversaries. It was after the prorogation of parliament that he had begun to caress that party, who in the first months of his reign had endured a continuance of their persecution. But the clergy in general detested the nonconformists hardly less than the papists, and had always abhorred the idea of even a parliamentary toleration. The present declaration went much farther than the recognised prerogative of dispensing with prohibitory statutes. Instead of removing the disability from individuals by letters patent, it swept away at once, in effect, the solemn ordinances of the legislature. There was, indeed, a reference to the future concurrence of the two houses, whenever he should think it convenient for them to meet; but so expressed as rather to insult, than pay respect to, their authority. And no one could help considering the declaration of a similar nature just published in Scotland as the best commentary on the present. In that he suspended all laws against the Roman catholics and moderate presbyterians, "by his sovereign authority, prerogative royal, and absolute power, which all his subjects were to obey without reserve;" and its whole tenor spoke, in as unequivocal language as his grandfather was accustomed to use, his contempt of all pretended limitations on his will.¹ Though the constitution of Scotland was not so well balanced as our own, it was notorious that the

¹ Ralph, 943. Maitte, ii. 267.

crown did not legally possess an absolute power in that kingdom; and men might conclude that, when he should think it less necessary to observe some measures with his English subjects, he would address them in the same strain,

§ 13. Those, indeed, who knew by what course his favour was to be sought, did not hesitate to go before and light him, as it were, to the altar on which their country's liberty was to be the victim. Many of the addresses which fill the columns of the London Gazette in 1687, on occasion of the declaration of indulgence, flatter the king with assertions of his dispensing power. These addresses, which, to the number of some hundreds, were sent up from every description of persons, the clergy, the nonconformists of all denominations, the grand juries, the justices of the peace, the corporations, the inhabitants of towns, in consequence of the declaration, afford a singular contrast to what we know of the prevailing dispositions of the people in that year, and of their general abandonment of the king's cause before the end of the next. But we should have cause to blush for the servile hypocrisy of our ancestors, if there were not good reason to believe that these addresses were sometimes the work of a small minority in the name of the rest. It was however very natural that they should deceive the court. The catholics were eager for that security which nothing but an act of the legislature could afford; and James, who, as well as his minister, had a strong aversion to the measure, seems about the latter end of the summer of 1687 to have made a sudden change in his scheme of government, and resolved once more to try the disposition of a parliament. For this purpose, having dissolved that from which he could expect nothing hostile to the church, he set himself to manage the election of another in such a manner as to ensure his main object, the security of the Romish religion.²

§ 14. "His first care," says his biographer Innes, "was to purge the corporations from that leaven which was in danger of corrupting the whole kingdom; so he appointed certain regulators to inspect the conduct of several borough towns, to correct abuses where it was practicable, and where not, by forfeiting their charters, to turn out such rotten members as infected the rest." This endeavour to violate the legal rights of electors, as well as to take away other vested franchises, by new-modelling corporations through commissions granted to regulators, was the most capital delinquency of the king's government; because it tended to preclude any reparation for the rest, and directly attacked the fundamental constitution of the state. But, like all his other measures, it displayed not more ill-will to the liberties of the nation than inability

² The proclamation for a new parliament came out Sept. 21, 1688. The king intended to create new peers enough to insure the repeal of the test.

to overthrow them. The catholics were so small a body, and so weak, especially in corporate towns, that the whole effect produced by the regulators was to place municipal power and trust in the hands of the nonconformists, those precarious and unfaithful allies of the court, whose resentment of past oppression, hereditary attachment to popular principles of government, and inveterate abhorrence of popery, were not to be effaced by an unnatural coalition. Hence, though they availed themselves, and surely without reproach, of the toleration held out to them, and even took the benefit of the scheme of regulation, so as to fill the corporation of London and many others, they were too much of Englishmen and protestants for the purposes of the court. The wiser part of the churchmen made secret overtures to their party; and by assurances of a toleration, if not also of a comprehension within the Anglican pale, won them over to a hearty concurrence in the great project that was on foot. The king found it necessary to descend so much from the haughty attitude he had taken at the outset of his reign, as personally to solicit men of rank and local influence for their votes on the two great measures of repealing the test and penal laws. The country gentlemen, in their different counties, were tried with circular questions, whether they would comply with the king in their elections, or, if themselves chosen, in parliament. Those who refused such a promise were erased from the lists of justices and deputy lieutenants. Yet his biographer admits that he received little encouragement to proceed in the experiment of a parliament; and it is said by the French ambassador that evasive answers were returned to these questions, with such uniformity of expression as indicated an alarming degree of concert.

§ 15. It is unnecessary to dwell on circumstances so well known as the expulsion of the fellows of Magdalen College. It was less extensively mischievous than the new-modelling of corporations, but perhaps a more glaring act of despotism. For though the crown had been accustomed from the time of the Reformation to send very peremptory commands to ecclesiastical foundations, and even to dispense with their statutes at discretion, with so little resistance that few seemed to doubt of its prerogative; though Elizabeth would probably have treated the fellows of any college much in the same manner as James II., if they had proceeded to an election in defiance of her recommendation; yet the right was not the less clearly theirs, and the struggles of a century would have been thrown away, if James II. was to govern as the Tudors, or even as his father and grandfather had done before him.² And

² This is the only ground to be taken in the great case of Magdalen College, as in that of Francis, at Cambridge, a

little earlier; for the precedents of dispensing with college statutes by the royal authority were numerous.

though Parker, bishop of Oxford, the first president whom the ecclesiastical commissioners selected on the 25th, was still nominally a protestant, his successor Giffard was an avowed member of the church of Rome. The college was filled with persons of the same persuasion; mass was said in the chapel, and the established religion was excluded with a degree of open force which entirely took away all security for its preservation in any other place. This latter act, especially, of the Magdalen drama, in a still greater degree than the nomination of Masey to the deanery of Christ Church, seems a decisive proof that the king's repeated promises of contenting himself with a toleration of his own religion would have yielded to his insuperable bigotry and the zeal of his confessor.

§ 16. The infatuated monarch was irritated by that which he should have taken as a terrible warning, this resistance to his will from the university of Oxford. That sanctuary of pure unspiced loyalty, as some would say,—that sink of all that was most abject in servility, as less courtly tongues might murmur,—the university of Oxford, which had but four short years back, by a solemn decree in convocation, poured forth anathemas on all who had doubted the divine right of monarchy, or asserted the privileges of subjects against their sovereigns, which had boasted in its addresses of an obedience without any restrictions or limitations, which but recently had seen a known convert to popery, and a person disqualified in other ways, installed by the chapter without any remonstrance in the deanery of Christ Church, was now the scene of a firm though temperate opposition to the king's positive command, and soon after the willing instrument of his ruin. In vain the pamphleteers, on the side of the court, upbraided the clergy with their apostasy from the principles they had so much vaunted. The imputation it was hard to repel; but, if they could not retract *their course* without shame, they could not continue in it without destruction. They were driven to extremity by the order of May 4, 1688, to read the declaration of indulgence in their churches. This, as is well known, met with great resistance, and, by inducing the primate and six other bishops to present a petition to the king against it, brought on that famous prosecution, which, more perhaps than all his former actions, cost him the allegiance of the Anglican church. The proceedings upon the trial of those prelates are so familiar as to require no particular notice. What is most worthy of remark is, that the very party who had most extolled the royal prerogative, and often in such terms as if all limitations of it were only to subsist at pleasure, became now the instruments of bringing it down within the compass and control of the law. If the king had a right to suspend the execution of statutes by proclamation, the bishops

subscribers to the association inviting the prince to come over, and pledging themselves to join him, say that not one in a thousand believe it to be the queen's; lord Devonshire separately held language to the same effect. The princess Anne talked with little restraint of her suspicions, and made no scruple of imparting them to her sister. Though no one can hesitate at present to acknowledge that the prince of Wales's legitimacy is out of all question, there was enough to raise a reasonable apprehension in the presumptive heir, that a party not really very scrupulous, and through religious animosity supposed to be still less so, had been induced by the undoubted prospect of advantage to draw the king, who had been wholly their slave, into one of those frauds which bigotry might call pious.

§ 19. The great event, however, of what has been emphatically denominated in the language of our public acts the Glorious Revolution, stands in need of no vulgar credulity, no mistaken prejudice, for its support. It can only rest on the basis of a liberal theory of government, which looks to the public good as the great end for which positive laws and the constitutional order of states have been instituted. It cannot be defended without rejecting the slavish principles of absolute obedience, or even that pretended modification of them which imagines some extreme case of intolerable tyranny, some, as it were, lunacy of despotism, as the only plea and palliation of resistance. Doubtless the administration of James II. was not of this nature. Doubtless he was not a Caligula, or a Commodus, or an Ezzelin, or a Galeazzo Sforza, or a Christiern II. of Denmark, or a Charles IX. of France, or one of those almost innumerable tyrants whom men have endured in the wantonness of unlimited power. No man had been deprived of his liberty by any illegal warrant. No man, except in the single though very important instance of Magdalen College, had been despoiled of his property. I must also add that the government of James II. will lose little by comparison with that of his father. The judgment in favour of his prerogative to dispense with the test was far more according to received notions of law, far less injurious and unconstitutional, than that which gave a sanction to ship-money. The injunction to read the declaration of indulgence in churches was less offensive to scrupulous men than the similar command to read the declaration of Sunday sports in the time of Charles I. Nor was any one punished for a refusal to comply with the one; while the prisons had been filled with those who had disobeyed the other. Nay, what is more, there are much stronger presumptions of the father's than of the son's intention to lay aside parliaments, and set up an avowed despotism. It is indeed amusing to observe that many who scarcely put bounds to their eulogies of Charles I. have

been content to abandon the cause of one who had no faults in his public conduct but such as seemed to have come by inheritance. The characters of the father and son were very closely similar; both proud of their judgment as well as their station, and still more obstinate in their understanding than in their purpose; both scrupulously conscientious in certain great points of conduct, to the sacrifice of that power which they had preferred to everything else; the one far superior in relish for the arts and for polite letters, the other more diligent and indefatigable in business; the father exempt from those vices of a court to which the son was too long addicted; not so harsh, perhaps, or prone to severity in his temper, but inferior in general sincerity and adherence to his word. They were both equally unfitted for the condition in which they were meant to stand—the limited kings of a wise and free people, the chiefs of the English commonwealth.

The most plausible argument against the necessity of so violent a remedy for public grievances as the abjuration of allegiance to a reigning sovereign was one that misled half the nation in that age, and is still sometimes insinuated by those whose pity for the misfortunes of the house of Stuart appears to predominate over every other sentiment which the history of the revolution should excite. It was alleged that the constitutional mode of address by parliament was not taken away; that the king's attempts to obtain promises of support from the electors and probable representatives showed his intention of calling one; that the writs were in fact ordered before the prince of Orange's expedition; that after the invader had reached London, James still offered to refer the terms of reconciliation with his people to a free parliament, though he could have no hope of evading any that might be proposed; that by reversing illegal judgments, by annulling unconstitutional dispensations, by reinstating those who had been unjustly dispossessed, by punishing wicked advisers, above all, by passing statutes to restrain the excesses and cut off the dangerous prerogatives of the monarchy (as efficacious, or more so, than the bill of rights and other measures that followed the revolution), all risk of arbitrary power, or of injury to the established religion, might have been prevented, without a violation of that hereditary right which was as fundamental in the constitution as any of the subject's privileges. It was not necessary to enter upon the delicate problem of absolute non-resistance, or to deny that the conservation of the whole was paramount to all positive laws. The question to be proved was, that a regard to this general safety exacted the means employed in the revolution, and constituted that extremity which could alone justify such a deviation from the standard rules of law and religion.

It is evidently true that James had made very little progress, or

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with undeviating, undiminished firmness. He had in view no distant prospect, when the entire succession of the Spanish monarchy would be claimed by that inflexible prince, whose renunciation at the treaty of the Pyrenees was already maintained to be invalid. Against the present aggression and future scheme of this neighbour the league of Augsburg had just been concluded. England, a free, a protestant, a maritime kingdom, would, in her natural position, as a rival of France, and deeply concerned in the independence of the Netherlands, become a leading member of this confederacy. But the sinister attachments of the house of Stuart had long diverted her from her true interests, and rendered her councils disgracefully and treacherously subservient to those of Louis. It was therefore the main object of the prince of Orange to strengthen the alliance by the vigorous co-operation of this kingdom; and with no other view, the emperor, and even the pope, had abetted his undertaking. But it was impossible to imagine that James would have come with sincerity into measures so repugnant to his predilections and interests. What better could be expected than a recurrence of that false and hollow system which had betrayed Europe and dishonoured England under Charles II.; or rather, would not the sense of injury and thralldom have inspired still more deadly aversion to the cause of those to whom he must have ascribed his humiliation? There was as little reason to hope that he would abandon the long-cherished schemes of arbitrary power, and the sacred interests of his own faith.

§ 20. In the Revolution of 1688 there was an unusual combination of favouring circumstances, and some of the most important, such as the king's sudden flight, not within prior calculation, which renders it no precedent for other times and occasions in point of expediency, whatever it may be in point of justice. Resistance to tyranny by overt rebellion incurs not only the risks of failure, but those of national impoverishment and confusion, of vindictive retaliation, and such aggressions (perhaps inevitable) on private right and liberty as render the name of revolution and its adherents odious. Those, on the other hand, who call in a powerful neighbour to protect them from domestic oppression, may too often expect to realise the horse of the fable, and endure a subjection more severe permanent, and ignominious, than what they shake off. But the revolution effected by William III. united the independent character of a national act with the regularity and the coercion of anarchy which belong to a military invasion. The United Provinces were not such a foreign potentate as could put in jeopardy the independence of England; nor could his army have maintained itself against the inclinations of the kingdom, though it was sufficient to repress any turbulence that would naturally attend so extraordinary

a crisis. Nothing was done by the multitude; no new men, either soldiers or demagogues, had their talents brought forward by this rapid and pacific revolution; it cost no blood, it violated no right, it was hardly to be traced in the course of justice; the formal and exterior character of the monarchy remained nearly the same in so complete a regeneration of its spirit. Few nations can hope to ascend up to the sphere of a just and honourable liberty, especially when long use has made the track of obedience familiar, and they have learned to move as it were only by the clank of the chain, with so little toil and hardship. We reason too exclusively from this peculiar instance of 1688 when we hail the fearful struggles of other revolutions with a sanguine and confident sympathy. Nor is the only error upon this side. For, as if the inveterate and cankerous ills of a commonwealth could be extirpated with no loss and suffering, we are often prone to abandon the popular cause in agitated nations with as much fickleness as we embraced it, when we find that intemperance, irregularity, and confusion, from which great revolutions are very seldom exempt. These are indeed so much their usual attendants, the reaction of a self-deceived multitude is so probable a consequence, the general prospect of success in most cases so precarious, that wise and good men are more likely to hesitate too long than to rush forward too eagerly. Yet, "whatever be the cost of this noble liberty, we must be content to pay it to Heaven."⁴

It is unnecessary even to mention those circumstances of this great event which are minutely known to almost all my readers. They were all eminently favourable in their effect to the regeneration of our constitution; even one of temporary inconvenience, namely, the return of James to London, after his detention by the fishermen near Feversham. This, as Burnet has observed, and as is easily demonstrated by the writings of that time, gave a different colour to the state of affairs, and raised up a party which did not before exist, or at least was too disheartened to show itself. His first desertion of the kingdom had disgusted every one, and might be construed into a voluntary cession. But his return to assume again the government put William under the necessity of using that intimidation which awakened the mistaken sympathy of a generous people. It made his subsequent flight, though certainly not what a man of courage enough to give his better judgment free play would have chosen, appear excusable and defensive. It brought out too glaringly, I mean for the satisfaction of prejudiced minds, the undeniable fact, that the two houses of convention deposed and expelled their sovereign. Thus the great schism of the Jacobites,

⁴ Montesquieu.

though it must otherwise have existed, gained its chief strength, and the revolution, to which at the outset a coalition of whigs and Tories had conspired, became, in its final result, in the settlement of the crown upon William and Mary, almost entirely the work of the former party.

But while the position of the new government was thus rendered less secure, by narrowing the basis of public opinion whereon it stood, the liberal principles of policy which the whigs had espoused became incomparably more powerful, and were necessarily involved in the continuance of the revolution-settlement. The ministers of William III. and of the house of Brunswick had no choice but to respect and countenance the doctrines of Locke, Hoadley, and Molesworth. The assertion of passive obedience to the crown grew obnoxious to the crown itself. Our new line of sovereigns scarcely ventured to hear of their hereditary right, and dreaded the cup of flattery that was drugged with poison. This was the greatest change that affected our monarchy by the fall of the house of Stuart. The laws were not so materially altered as the spirit and sentiments of the people. Hence those who look only at the former have been prone to underrate the magnitude of this revolution. The fundamental maxims of the constitution, both as they regard the king and the subject, may seem nearly the same; but the disposition with which they were received and interpreted was entirely different.

§ 21. It was in this turn of feeling, in this change, if I may so say, of the heart, far more than in any positive statutes and improvements of the law, that I consider the Revolution to have been eminently conducive to our freedom and prosperity. Laws and statutes as remedial, nay, more closely limiting the prerogative than the bill of rights and act of settlement, might possibly have been obtained from James himself, as the price of his continuance on the throne, or from his family as that of their restoration to it. But what the Revolution did for us was this: it broke a spell that had charmed the nation. It cut up by the roots all that theory of indefeasible right, of paramount prerogative, which had put the crown in continual opposition to the people. A contention had now subsisted for five hundred years, but particularly during the last four reigns, against the aggressions of arbitrary power. The sovereigns of this country had never patiently endured the control of parliament; nor was it natural for them to do so, while the two houses of parliament appeared historically, and in legal language, to derive their existence as well as privileges from the crown itself. They had at their side the pliant lawyers, who held the prerogative to be uncontrollable by statutes, a doctrine of itself destructive to any scheme of reconciliation and compromise between

to controvert, had been subjected to all the insults and reproaches of the opposite faction. The lords agreed with equal unanimity to this vote; which, though it was expressed only as an abstract proposition, led by a practical inference to the whole change that the whigs had in view. But upon the former resolution several important divisions took place. The first question put, in order to save a nominal allegiance to the late king, was, whether a regency, with the administration of regal power under the style of king James II. during the life of the said king James, be the best and safest way to preserve the protestant religion and the laws of this kingdom? This was supported both by those peers who really meant to exclude the king from the enjoyment of power, such as Nottingham, its great promoter, and by those who, like Clarendon, were anxious for his return upon terms of security for their religion and liberty. The motion was lost by fifty-one to forty-nine; and this seems to have virtually decided, in the judgment of the house, that James had lost the throne. The lords then resolved that there was an original contract between the king and the people, by fifty-five to forty-six; a position that seems rather too theoretical, yet necessary at that time, as denying the divine origin of monarchy, from which its absolute and indefeasible authority had been plausibly derived. They concurred, without much debate, in the rest of the commons' vote, till they came to the clause that he had abdicated the government, for which they substituted the word "deserted." They next omitted the final and most important clause, that the throne was thereby vacant, by a majority of fifty-five to forty-one. This was owing to the party of lord Danby, who asserted a devolution of the crown on the princess of Orange. It seemed to be tacitly understood by both sides that the infant child was to be presumed spurious. This at least was a necessary supposition for the tories, who sought in the idle rumours of the time an excuse for abandoning his right. As to the whigs, though they were active in discrediting this unfortunate boy's legitimacy, their own broad principles of changing the line of succession rendered it, in point of argument, a superfluous inquiry. The tories, who had made little resistance to the vote of abdication, when it was proposed in the commons, recovered courage by this difference between the two houses; and, perhaps by observing the king's party to be stronger out of doors than it had appeared to be, were able to muster 151 voices against 282 in favour of agreeing with the lords in leaving out the clause about the vacancy of the throne. There was still, however, a far greater preponderance of the whigs in one part of the convention than of the tories in the other. In the famous conference that ensued between committees of the two houses upon these amendments, it was never pretended that the word "abdication"

was used in its ordinary sense, for a voluntary resignation of the crown. The commons did not practise so pitiful a subterfuge. Nor could the lords explicitly maintain, whatever might be the wishes of their managers, that the king was not expelled and excluded as much by their own word "desertion" as by that which the lower house had employed. Their own previous vote against a regency was decisive upon this point. But as abdication was a gentler term than forfeiture, so desertion appeared a still softer method of expressing the same idea. Their chief objection, however, to the former word was that it led, or might seem to lead, to the vacancy of the throne, against which their principal arguments were directed. They contended that in our government there could be no interval or vacancy, the heir's right being complete by a demise of the crown; so that it would at once render the monarchy elective, if any other person were designated to the succession. The commons did not deny that the present case was one of election, though they refused to allow that the monarchy was thus rendered perpetually elective. They asked, supposing a right to descend upon the next heir, who was that heir to inherit it? and gained one of their chief advantages by the difficulty of evading this question. It was indeed evident that, if the lords should carry their amendments, an inquiry into the legitimacy of the prince of Wales could by no means be dispensed with. Unless that could be disproved more satisfactorily than they had reason to hope, they must come back to the inconveniences of a regency, with the prospect of bequeathing interminable confusion to their posterity. For, if the descendants of James should continue in the Roman catholic religion, the nation might be placed in the ridiculous situation of acknowledging a dynasty of exiled kings, whose lawful prerogative would be withheld by another race of protestant regents. It was indeed strange to apply the provisional substitution of a regent in cases of infancy or imbecility of mind to a prince of mature age and full capacity for the exercise of power. Upon the king's return to England this delegated authority must cease of itself, unless supported by votes of parliament as violent and incompatible with the regular constitution as his deprivation of the royal title, but far less secure for the subject, whom the statute of Henry VII. would shelter in paying obedience to a king *de facto*, while the fate of sir Henry Vane was an awful proof that no other name could give countenance to usurpation. A great part of the nation not thirty years before had been compelled by acts of parliament to declare upon oath their abhorrence of that traitorous position, that arms might be taken up by the king's authority against his person or those commissioned by him, through the influence of those very tories or loyalists who had now recourse to the identical distinction between the king's natural

CHAPTER XV.

ON THE REIGN OF WILLIAM III.

§ 1. Declaration of Rights. § 2. Bill of Rights. § 3. Military Force without Consent declared illegal. § 4. Discontent with the new Government. § 5. Its Causes. Incompatibility of the Revolution with received Principles. § 6. Character and Errors of William. § 7. Jealousy of the Whigs. Bill of Indemnity. § 8. Bill for restoring Corporations. § 9. Settlement of the Revenue. § 10. Appropriation of Supplies. § 11. Dissatisfaction of the King. § 12. No Republican Party in Existence. § 13. William employs Tories in Ministry. Intrigues with the late King. § 14. Schemes for his Restoration. § 15. Attitude of Sir John Fenwick. § 16. Success of the War. § 17. Its Expenses. § 18. Treaty of Ryswick. § 19. Jealousy of the Commons. Army reduced. § 20. Irish forfeitures resumed. § 21. Parliamentary Inquiry. § 22. Treaties of Partition. § 23. Improvements in Constitution under William. § 24. Bill for Triennial Parliaments. § 25. Law of Treason. § 26. Liberty of the Press. § 27. Law of Libel. § 28. Religious Toleration. § 29. Attempt at Compromise. § 30. Scheme of the Nonjurors. § 31. Laws against Roman Catholics. § 32. Act of Settlement. § 33. Limitations of Prerogative contained in it. § 34. Privy Council superseded by a Cabinet. § 35. Exclusion of Placemen and Pensioners from Parliament. § 36. Independence of Judges. § 37. Oath of Abjuration.

§ 1. The Revolution is not to be considered as a mere effort of a particular monarch; much less as grounded upon the danger of the Anglican church, its emoluments, and dignities, from the bigotry of a hostile religion. It was rather the triumph of those principles which, in the language of the present day, are denominated liberal or constitutional, over those of absolute monarchy, or of monarchy not effectually controlled by stated boundaries. It was the termination of a contest between the regal power and that of parliament, which could not have been brought to so favourable an issue by any other means. But, while the chief renovation in the spirit of our government was likely to spring from breaking the line of succession, while no positive enactments would have sufficed to give security to freedom with the legitimate race of Stuart on the throne, it would have been most culpable, and even preposterous, to permit this occasion to pass by without asserting and defining those rights and liberties which the very indeterminate nature of the king's prerogative at common law, as well as the unequivocal extension it had lately received, must continually place in jeopardy. The house of lords, indeed, as I have observed in the last chapter, would have conferred the crown on William and Mary, leaving the redress of grievances to future arrangement; and some eminent lawyers in the

commons, Maynard and Pollexfen, seem to have had apprehensions of keeping the nation too long in a state of anarchy. But the great majority of the commons wisely resolved to go at once to the root of the nation's grievances, and show their new sovereign that he was raised to the throne for the sake of those liberties by violating which his predecessor had forfeited it.

The declaration of rights presented to the prince of Orange by the marquiss of Halifax, as speaker of the lords, in the presence of both houses, on the 18th of February, consists of three parts: a recital of the illegal and arbitrary acts committed by the late king, and of their consequent vote of abdication; a declaration, nearly following the words of the former part, that such enumerated acts are illegal; and a resolution that the throne shall be filled by the prince and princess of Orange, according to the limitations mentioned in the last chapter. Thus the declaration of rights was indissolubly connected with the revolution-settlement, as its motive and its condition.

The lords and commons in this instrument declare: That the pretended power of suspending laws, and the execution of laws, by regal authority without consent of parliament, is illegal; That the pretended power of dispensing with laws by regal authority, as it hath been assumed and exercised of late, is illegal; That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious; That levying of money for or to the use of the crown, by pretence of prerogative without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal; That it is the right of the subjects to petition the king, and that all commitments or prosecutions for such petitions are illegal; That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is illegal; That the subjects which are protestants may have arms for their defence suitable to their condition, and as allowed by law; That elections of members of parliament ought to be free; That the freedom of speech or debates, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament; That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; That juries ought to be duly impanelled and returned, and that jurors which pass upon men in trials of high treason ought to be freeholders; That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void; And that, for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

§ 2. This declaration was, some months afterwards, confirmed by a regular act of the legislature in the BILL OF RIGHTS, which establishes at the same time the limitation of the crown according to the vote of both houses, and adds the important provision, that all persons who shall hold communion with the church of Rome, or shall marry a papist, shall be excluded, and for ever incapable to possess, inherit, or enjoy, the crown and government of this realm; and in all such cases the people of these realms shall be absolved from their allegiance, and the crown shall descend to the next heir. This was as near an approach to a generalisation of the principle of resistance as could be admitted with any security for public order.

The bill of rights contained only one clause extending rather beyond the propositions laid down in the declaration. This relates to the dispensing power, which the lords had been unwilling absolutely to condemn. They softened the general assertion of its illegality sent up from the other house, by inserting the words "as it has been exercised of late." In the bill of rights therefore a clause was introduced, that no dispensation by non obstante to any statute should be allowed, except in such cases as should be specially provided for by a bill to be passed during the present session. This reservation went to satisfy the scruples of the lords, who did not agree without difficulty to the complete abolition of a prerogative so long recognised, and in many cases so convenient. But the palpable danger of permitting it to exist in its indefinite state, subject to the interpretation of time-serving judges, prevailed with the commons over this consideration of convenience; and though in the next parliament the judges were ordered by the house of lords to draw a bill for the king's dispensing in such cases wherein they should find it necessary, and for abrogating such laws as had been usually dispensed with and were become useless, the subject seems to have received no further attention.¹

§ 3. Except in this article of the dispensing prerogative, we cannot say, on comparing the bill of rights with what is proved to be the law by statutes, or generally esteemed to be such on the authority of our best writers, that it took away any legal power of the crown, or enlarged the limits of popular and parliamentary privilege. The most questionable proposition, though at the same time one of the most important, was that which asserts the illegality of a standing army in time of peace, unless with consent of parliament. It seems difficult to perceive in what respect this infringed on any private man's right, or by what clear reason (for no statute could be pretended) the king was debarr'd from enlisting soldiers by voluntary contract for the defence of his dominions,

especially after an express law had declared the sole power over the militia, without giving any definition of that word, to reside in the crown. This had never been expressly maintained by Charles II.'s parliaments; though the general repugnance of the nation to what was certainly an innovation might have provoked a body of men who did not always measure their words to declare its illegality. It was however at least unconstitutional, by which, as distinguished from illegal, I mean a novelty of much importance, tending to endanger the established laws. And it is manifest that the king could never inflict penalties by martial law, or generally by any other course, on his troops, nor quarter them on the inhabitants, nor cause them to interfere with the civil authorities; so that, even if the proposition so absolutely expressed may be somewhat too wide, it still should be considered as virtually correct. But its distinct assertion in the bill of rights put a most essential restraint on the monarchy, and rendered it in effect for ever impossible to employ any direct force or intimidation against the established laws and liberties of the people.

§ 4. A revolution so thoroughly remedial, and accomplished with so little cost of private suffering, so little of angry punishment or oppression of the vanquished, ought to have been hailed with unbounded thankfulness and satisfaction. The nation's deliverance and chosen sovereign, in himself the most magnanimous and heroic character of that age, might have expected no return but admiration and gratitude. Yet this was very far from being the case. In no period of time under the Stuarts were public discontent and opposition of parliament more prominent than in the reign of William III.; and that high-souled prince enjoyed far less of his subjects' affection than Charles II. No part of our history perhaps is read upon the whole with less satisfaction than these thirteen years during which he sat upon his elective throne. It will be sufficient for me to sketch generally the leading causes, and the errors both of the prince and people, which hindered the blessings of the Revolution from being duly appreciated by its contemporaries.

§ 5. The votes of the two houses, that James had abdicated, or in plainer words forfeited, his royal authority, that the crown was vacant, that one out of the regular line of succession should be raised to it, were so untenable by any known law, so repugnant to the principles of the established church, that a nation accustomed to think upon matters of government only as lawyers and churchmen dictated could not easily reconcile them to its preconceived notions of duty. The first burst of resentment against the late king was mitigated by his full; compassion, and even confidence, began to take place of it; his adherents—some denying or extenuating

the faults of his administration, others more artfully representing them as capable of redress by legal measures—having recovered from their consternation, took advantage of the necessary delay before the meeting of the convention, and of the time consumed in its debates, to publish pamphlets and circulate rumours in his behalf. Thus, at the moment when William and Mary were proclaimed (though it seems highly probable that a majority of the kingdom sustained the bold votes of its representatives), there was yet a very powerful minority who believed the constitution to be most violently shaken, if not irretrievably destroyed, and the rightful sovereign to have been excluded by usurpation. The clergy were moved by pride and shame, by the just apprehension that their influence over the people would be impaired, by jealousy or hatred of the nonconformists, to deprecate so practical a confusion of the doctrines they had preached, especially when an oath of allegiance to their new sovereign came to be imposed; and they had no alternative but to resign their benefices, or wound their reputations and consciences by submission upon some casuistical pretext. Eight bishops, including the primate and several of those who had been foremost in the defence of the church during the late reign, with about four hundred clergy, some of them highly distinguished, chose the more honourable course of refusing the new oath; and thus began the schism of the nonjurors, more mischievous in its commencement than its continuance, and not so dangerous to the government of William III. and George I. as the false submission of less sincere men.

§ 6. The demagogue of William, always cold and sometimes

harsh, his foreign origin (a sort of crime in English eyes) and foreign favourites, the natural and almost laudable prejudice against one who had risen by the misfortunes of a very near relation, conspired with a desire of power not very judiciously displayed by him to keep alive this disaffection; and the opposite party, regardless of all the deencies of political lying, took care to aggravate it by the vilest calumnies against one who, though not exempt from errors, must be accounted the greatest man of his own age. It is certain that his government was in very considerable danger for three or four years after the Revolution, and even to the peace of Ryswick. The change appeared so marvellous, and contrary to the bent of men's expectation, that it could not be permanent. Hence he was surrounded by the timid and the treacherous; by those who meant to have merits to plead after a restoration, and those who meant at least to be secure. A new and revolutionary government is seldom fairly dealt with. Mankind, accusing everything in favour of legitimate ideal faultlessness from that which claims

its utility. Those who deem their own merit unrequited become always a numerous and implacable class of adversaries; those whose schemes of public improvement have not been followed think nothing gained by the change, and return to a restless censoriousness in which they have been accustomed to place delight. With all these it was natural that William should have to contend; but we cannot in justice impute all the unpopularity of his administration to the disaffection of one party, or the fickleness and ingratitude of another. It arose in no slight degree from errors of his own.

§ 7. The king had been raised to the throne by the vigour and zeal of the whigs; but the opposite party were so nearly upon an equality in both houses that it would have been difficult to frame his government on an exclusive basis. It would also have been highly impolitic, and, with respect to some few persons, ungrateful, to put a slight upon those who had an undeniable majority in the most powerful classes. William acted, therefore, on a wise and liberal principle, in bestowing offices of trust on lord Danby, so meritorious in the Revolution, and on lord Nottingham, whose probity was unimpeached; while he gave the whigs, as was due, a decided preponderance in his council. Many of them, however, with that indiscriminating acrimony which belongs to all factions, could not endure the elevation of men who had complied with the court too long, and seemed by their tardy opposition to be rather the patriots of the church than of civil liberty. They remembered that Danby had been impeached as a corrupt and dangerous minister; that Halifax had been involved, at least by holding a confidential office at the time, in the last and worst part of Charles's reign. They saw Godolphin, who had concurred in the commitment of the bishops, and every other measure of the late king, still in the treasury; and, though they could not reproach Nottingham with any misconduct, were shocked that his conspicuous opposition to the new settlement should be rewarded with the post of secretary of state. The mismanagement of affairs in Ireland during 1689, which was very glaring, furnished specious grounds for suspicion that the king was betrayed. It is probable that he was so, though not at that time by the chiefs of his ministry. This was the beginning of that dissatisfaction with the government of William, on the part of those who had the most zeal for his throne, which eventually became far more harassing than the conspiracies of his real enemies. Halifax gave way to the prejudices of the commons, and retired from power.

The same honest warmth which impelled the whigs to murmur at the employment of men sullied by their compliance with the court, made them unwilling to concur in the king's desire of a total amnesty. They retained the bill of indemnity in the

became vested in himself as king of England, or at least ought to be instantly settled by parliament according to the usual method. There could indeed be no pretence for disputing his right to the hereditary excise, though this seems to have been questioned in debate; but the commons soon displayed a considerable reluctance to grant the temporary revenue for the king's life. This had usually been done in the first parliament of every reign. But the accounts for which they called on this occasion exhibited so considerable an increase of the receipts on one hand, so alarming a disposition of the expenditure on the other, that they deemed it expedient to restrain a liberality which was not only likely to go beyond their intention, but to place them, at least in future times, too much within the power of the crown. Its average expenses appeared to have been 1,700,000*l*. Of this 610,000*l*. was the charge of the late king's army, and 83,493*l*. of the ordnance. Nearly 90,000*l*. was set under the suspicious head of secret service, imprested to Mr. Guy, secretary of the treasury. Thus it was evident that, far from sinking below the proper level, as had been the general complaint of the court in the Stuart reigns, the revenue was greatly and dangerously above it; and its excess might either be consumed in unnecessary luxury, or diverted to the worse purposes of despotism and corruption. They had indeed just declared a standing army to be illegal. But there could be no such security for the observance of this declaration as the want of means in the crown to maintain one. Their experience of the interminable contention about supply, which had been fought with various success between the kings of England and their parliaments for some hundred years, dictated a course to which they wisely and steadily adhered, and to which, perhaps above all other changes at this revolution, the augmented authority of the house of commons must be ascribed.

§ 10. They began by voting that 1,200,000*l*. should be the annual revenue of the crown in time of peace; and that one half of this should be appropriated to the maintenance of the king's government and royal family, or what is now called the civil list, the other to the public expense and contingent expenditure. The breaking out of an eight years' war rendered it impossible to carry into effect these resolutions as to the peace establishment: but they did not lose sight of their principle, that the king's regular and domestic expenses should be determined by a fixed annual sum, distinct from the other departments of public service. They speedily improved upon their original scheme of a definite revenue, by taking a more close and constant superintendence of these departments, the navy, army, and ordnance. Estimates of the probable expenditure were regularly laid before them, and the supply granted was strictly appropriated to each particular service.

This great and fundamental principle, as it has long been justly considered, that the money voted by parliament is appropriated, and can only be applied, to certain specified heads of expenditure, was introduced, as I have before mentioned, in the reign of Charles II., and generally, though not in every instance, adopted by his parliament. The unworthy house of commons that sat in 1685, not content with a needless augmentation of the revenue, took credit with the king for not having appropriated their supplies. But from the Revolution it has been the invariable usage. The lords of the treasury, by a clause annually repeated in the appropriation act of every session, are forbidden, under severe penalties, to order by their warrant any moneys in the exchequer, so appropriated, from being issued for any other service, and the officers of the exchequer to obey any such warrant. This has given the house of commons so effectual a control over the executive power, or, more truly speaking, has rendered it so much a participator in that power, that no administration can possibly subsist without its concurrence; nor can the session of parliament be intermitted for an entire year, without leaving both the naval and military force of the kingdom unprovided for. In time of war, or in circumstances that may induce war, it has not been very uncommon to deviate a little from the rule of appropriation, by a grant of considerable sums on a vote of credit, which the crown is thus enabled to apply at its discretion during the recess of parliament; and we have had also too frequent experience that the charges of public service have not been brought within the limits of the last year's appropriation. But the general principle has not perhaps been often transgressed without sufficient reason; and a house of commons would be deeply responsible to the country, if through supine confidence it should abandon that high privilege which has made it the arbiter of court factions, and the regulator of foreign connexions. It is to this transference of the executive government (for the phrase is hardly too strong) from the crown to the two houses of parliament, and especially the commons, that we owe the proud attitude which England has maintained since the Revolution, so extraordinarily dissimilar, in the eyes of Europe, to her condition under the Stuarts. The supplies, meted out with niggardly caution by former parliaments to sovereigns whom they could not trust, have flowed with redundant profuseness when they could judge of their necessity and direct their application. Doubtless the demand has always been fixed by the ministers of the crown, and its influence has retrieved in some degree the loss of authority; but it is still true that no small portion of the executive power, according to the established laws and customs of our government, has passed into the hands of that body which prescribes the application of the revenue, as

time to the opposite faction.² But among these a real disaffection to his government prevailed so widely that he could with difficulty select men sincerely attached to it. The majority professed only to pay allegiance as to a sovereign *de facto*, and violently opposed the bill of recognition in 1690, both on account of the words "rightful and lawful king" which it applied to William, and of its declaring the laws passed in the last parliament to have been good and valid. They had influence enough with the king to defeat a bill proposed by the whigs, by which an oath of abjuration of James's right was to be taken by all persons in trust. It is by no means certain that even those who abstained from all connexion with James after his loss of the throne would have made a strenuous resistance in case of his landing to recover it. But we know that a large proportion of the tories were engaged in a confederacy to support him. Almost every peer, in fact, of any consideration among that party, with the exception of lord Nottingham, is implicated by the secret documents which Macpherson and Dalrymple have brought to light; especially Godolphin, Carmarthen (Danby), and Marlborough, the second at that time prime minister of William (as he might justly be called), the last with circumstances of extraordinary and abandoned treachery towards his country as well as his allegiance. Two of the most distinguished whigs (and if the imputation is not fully substantiated against others by name, we know generally that many were liable to it) forfeited a high name among their contemporaries in the eyes of a posterity which has known them better; the earl of Shrewsbury, from that strange feebleness of soul which hung like a spell upon his nobler qualities, and admiral Russell, from insolent pride and sullenness of temper. Both these were engaged in the vile intrigues of a faction they abhorred; but Shrewsbury soon learned again to revere the sovereign he had contributed to raise, and withdrew from the contamination of Jacobitism. It does not appear that he betrayed that trust which William is said with extraordinary magnanimity to have reposed on him, after a full knowledge of his connexion with the court of St. Germain. But Russell, though compelled to win the battle of La Hogue against his will, took care to render his splendid victory as little advantageous as possible. The credulity and almost wilful blindness of faction is strongly manifested in the conduct of the house of commons as to the quarrel between this commander and the board of admiralty. They chose to support one who was secretly a traitor, because he bore the name of whig, tolerating his infamous neglect of duty and contemptible excuses, in order to pull down an honest though not very able minister who belonged to the tories. But they saw

² The sudden dissolution of this parliament cost him the hearts of those who had made him king.

clearly that the king was betrayed, though mistaken, in this instance, as to the persons; and were right in concluding that the men who had effected the Revolution were in general most likely to maintain it; or, in the words of a committee of the whole house, "That his majesty be humbly advised, for the necessary support of his government, to employ in his councils and management of his affairs such persons only whose principles oblige them to stand by him and his right against the late king James, and all other pretenders whatsoever." It is plain from this and other votes of the commons that the tories had lost that majority which they seem to have held in the first session of this parliament.

§ 14. It is not, however, to be inferred, from this extensive combination in favour of the banished king, that his party embraced the majority of the nation, or that he could have been restored with any general testimonies of satisfaction. The friends of the Revolution were still by far the more powerful body. Even the secret emissaries of James confess that the common people were strongly prejudiced against his return. The hopes of that wretched victim of his own bigotry and violence rested less on the loyalty of his former subjects, or on their disaffection to his rival, than on the perfidious conspiracy of English statesmen and admirals, of lords-lieutenants and governors of towns, and on so numerous a French army as an ill-defended and disunited kingdom would be incapable to resist. He was to return, not as his brother, alone and unarmed, strong only in the consentient voice of the nation, but amidst the bayonets of 30,000 French auxiliaries. These were the pledges of just and constitutional rule which our patriot Jacobites invoked against the despotism of William III. It was from a king of the house of Stuart, from James II., from one thus encircled by the soldiers of Louis XIV., that we were to receive the guarantee of civil and religious liberty. Happily the determined love of arbitrary power, burning unextinguished amidst exile and disgrace, would not permit him to promise, in any distinct manner, those securities which a large portion of his own adherents required. The Jacobite faction was divided between compounders and non-compounders: the one insisting on the necessity of holding forth a promise of such new enactments upon the king's restoration as might remove all jealousies as to the rights of the church and people; the other, more agreeably to James's temper, rejecting every compromise with what they called the republican party at the expense of his ancient prerogative. In a declaration which he issued from St. Germain in 1692 there was so little acknowledgment of error, so few promises of security, so many exceptions from the amnesty he offered, that the wiser of his partisans in England were willing to insinuate that it was not authentic. This declaration, and the virulence of Jacobite pamphlets.

generally unfortunate, unsatisfactory in its result, carried on at a cost unknown to former times, amidst the decay of trade, the exhaustion of resources, the decline, as there seems good reason to believe, of population itself, was the festering wound that turned a people's gratitude into factiousness and treachery. It was easy to excite the national prejudices against campaigns in Flanders, especially when so unsuccessful, and to inveigh against the neglect of our maritime power. Yet, unless we could have been secure against invasion, which Louis would infallibly have attempted, had not his whole force been occupied by the grand alliance, and which, in the feeble condition of our navy and commerce, at one time could not have been impracticable, the defeats of Steenkirk and Landen might probably have been sustained at home. The war in 1689, and the great confederacy of Europe, which William alone could animate with any steadiness and energy, were most evidently and undeniably the means of preserving the independence of England. That danger, which has sometimes been in our countrymen's mouths with little meaning, of becoming a province to France, was then close and actual; for I hold the restoration of the house of Stuart to be but another expression for that ignominy and servitude.

§ 17. The expense therefore of this war must not be reckoned unnecessary; nor must we censure the government for that small portion of our debt which it was compelled to entail on posterity.³ It is to the honour of William's administration, and of his parliaments, not always clear-sighted, but honest and zealous for the public weal, that they deviated so little from the praiseworthy, though sometimes impracticable, policy of providing a revenue commensurate with the annual expenditure. The supplies annually raised during the war were about five millions, more than double the revenue of James II. But a great decline took place in the produce of the taxes by which that revenue was levied. In 1693 the customs had dwindled to less than half their amount before the Revolution, the excise duties to little more than half. This rendered heavy impositions on land inevitable; a tax always obnoxious, and keeping up disaffection in the most powerful class of the community. The first land-tax was imposed in 1690, at the rate of three shillings in the pound on the rental; and it continued ever afterwards to be annually granted, at different rates, but commonly at four shillings in the pound, till it was made perpetual in 1798. A tax of twenty per cent. might well seem grievous; and the

³ The debt at the king's death amounted to 16,394,702*l.*, of which above three millions were to expire in 1710. Of this sum 664,263*l.* was incurred before the Restoration,

being a part of the money of which Charles II. had robbed the public exchequer by shutting up the exchequer

notorious inequality of the assessment in different counties tended rather to aggravate the burthen upon those whose contribution was the fairest. Fresh schemes of finance were devised, and, on the whole, patiently borne by a jaded people. The Bank of England rose under the auspices of the whig party, and materially relieved the immediate exigencies of the government, while it palliated the general distress by discounting bills and lending money at an easier rate of interest. Yet its notes were depreciated by twenty per cent. in exchange for silver; and exchequer tallies at least twice as much, till they were funded at an interest of eight per cent. But these resources generally falling very short of calculation, and being anticipated at such an exorbitant discount, a constantly increasing deficiency arose; and public credit sunk so low, that about the year 1696 it was hardly possible to pay the fleet and army from month to month, and a total bankruptcy seemed near at hand. These distresses again were enhanced by the depreciation of the circulating coin, and by the bold remedy of a re-coinage, which made the immediate stagnation of commerce more complete. The mere operation of exchanging the worn silver coin for the new, which Mr. Montagu had the courage to do without lowering the standard, cost the government two millions and a half. Certainly the vessel of our commonwealth has never been so close to shipwreck as in this period; we have seen the storm raging in still greater terror round our heads, but with far stouter planks and tougher cables to confront and ride through it.

Those who accused William of neglecting the maritime force of England, knew little what they said, or cared little about its truth. A soldier, and a native of Holland, he naturally looked to the Spanish Netherlands as the theatre on which the battle of France and Europe was to be fought. It was by the possession of that country and its chief fortresses that Louis aspired to hold Holland in vassalage, to menace the coasts of England, and to keep the Empire under his influence. Meanwhile the naval annals of this war added much to our renown; Russell, glorious in his own despite at La Hogue, Rooke, and Shovel kept up the honour of the English flag. After that great victory the enemy never encountered us in battle; and the wintering of the fleet at Cadiz in 1694, a measure determined on by William's energetic mind, against the advice of his ministers, and in spite of the fretful insolence of the admiral, gave us so decided a pre-eminence both in the Atlantic and Mediterranean seas, that it is hard to say what more could have been achieved by the most exclusive attention to the navy.

§ 18. The treaty of Ryswick was concluded on at least as fair terms as almost perpetual ill fortune could warrant us to expect. It compelled Louis XIV. to recognise the king's title, and thus

forfeitures. These confiscations of the property of those who fought on the side of James, though, in a legal sense, at the crown's disposal, ought undoubtedly to have been applied to the public service. It was the intention of parliament that two-thirds at least of these estates should be sold for that purpose; and William had in answer to an address (Jan. 1690), promised to make no grant of them till the matter should be considered in the ensuing session. Several bills were brought in to carry the original resolutions into effect, but, probably through the influence of government, they always fell to the ground in one or other house of parliament. Meanwhile the king granted away the whole of these forfeitures, about a million of acres, with a culpable profuseness, to the enriching of his personal favourites, such as the earl of Portland and the countess of Orkney. Yet, as this had been done in the exercise of a lawful prerogative, it is not easy to justify the act of resumption passed in 1699. The precedents for resumption of grants were obsolete, and derived from bad times. It was agreed on all hands that the royal domain is not inalienable; if this were a mischief, as could not perhaps be doubted, it was one that the legislature had permitted with open eyes till there was nothing left to be alienated.

But, even if the resumption of William's Irish grants could be reckoned defensible, there can be no doubt that the mode adopted by the commons, of tacking, as it was called, the provisions for this purpose to a money-bill, so as to render it impossible for the lords even to modify them without depriving the king of his supply, tended to subvert the constitution and annihilate the rights of a co-equal house of parliament. This most reprehensible device, though not an unnatural consequence of their pretended right to an exclusive concern in money-bills, had been employed in a former instance during this reign. They were again successful on this occasion; the lords receded from their amendments, and passed the bill at the king's desire, who perceived that the fury of the commons was tending to a terrible convulsion. But the precedent was infinitely dangerous to their legislative power. If the commons, after some more attempts of the same nature, desisted from so unjust an encroachment, it must be attributed to that which has been the great preservative of the equilibrium in our government, the public voice of a reflecting people, averse to manifest innovation, and soon offended by the intemperance of factions.

§ 21. The essential change which the fall of the old dynasty had wrought in our constitution displayed itself in such a vigorous spirit of inquiry and interference of parliament with all the course of government as, if not absolutely new, was more uncontested and more effectual than before the Revolution. The commons indeed under Charles II. had not wholly lost sight of the precedents which

the long parliament had established for them; though with continual resistance from the court, in which their right of examination was by no means admitted. But the tories throughout the reign of William evinced a departure from the ancient principles of their faction in nothing more than in asserting to the fullest extent the powers and privileges of the commons; and, in the coalition they formed with the malcontent whigs, if the men of liberty adopted the nickname of the men of prerogative, the latter did not less take up the maxims and feelings of the former. The bad success and suspected management of public affairs co-operated with the strong spirit of party to establish this important accession of authority to the house of commons. In June 1689 a special committee was appointed to inquire into the miscarriages of the war in Ireland, especially as to the delay in relieving Londonderry. A similar committee was appointed in the lords. The former reported severely against colonel Lundy, governor of that city; and the house addressed the king that he might be sent over to be tried for the treasons laid to his charge. I do not think there is any earlier precedent in the Journals for so specific an inquiry into the conduct of a public officer, especially one in military command. It marks, therefore, very distinctly the change of spirit which I have so frequently mentioned. No courtier has ever since ventured to deny this general right of inquiry, though it is a frequent practice to elude it. The right to inquire draws with it the necessary means, the examination of witnesses, records, papers, enforced by the strong arm of parliamentary privilege. In one respect alone these powers have fallen rather short; the commons do not administer an oath; and having neglected to claim this authority in the irregular times when they could make a privilege by a vote, they would now perhaps find difficulty in obtaining it by consent of the house of peers. They renewed this committee for inquiring into the miscarriages of the war in the next session. They went very fully into the dispute between the board of admiralty and admiral Russell after the battle of La Hogue; and the year after, investigated the conduct of his successors, Killigrew and Delaval, in the command of the Channel fleet. They went, in the winter of 1694, into a very long examination of the admirals and the orders issued by the admiralty during the preceding year; and then voted that the sending the fleet to the Mediterranean, and the continuing it there this winter, has been to the honour and interest of his majesty and his kingdoms. But it is hardly worth while to enumerate later instances of exercising a right which had become indisputable, and even before it rested on the basis of precedent, could not reasonably be denied to those who might advise, remonstrate, and impeach.

§ 22. The general unpopularity of William's administration, and

commons, as it was easy to foresee, did not abandon so important a measure; a similar bill received the royal assent in November, 1694. By the triennial bill it was simply provided that every parliament should cease and determine within three years from its meeting. The clause contained in the act of Charles II. against the intermission of parliaments for more than three years is repeated; but it was not thought necessary to revive the somewhat violent and perhaps impracticable provisions by which the act of 1641 had secured their meeting; it being evident that even annual sessions might now be relied upon as indispensable to the machine of government.

This annual assembly of parliament was rendered necessary, in the first place, by the strict appropriation of the revenue according to votes of supply. It was secured, next, by passing the mutiny bill, under which the army is held together, and subjected to military discipline, for a short term, seldom or never exceeding twelve months. These are the two effectual securities against military power: that no pay can be issued to the troops without a previous authorisation by the commons in a committee of supply, and by both houses in an act of appropriation; and that no officer or soldier can be punished for disobedience, nor any court-martial held, without the annual re-enactment of the mutiny bill. Thus it is strictly true that, if the king were not to summon parliament every year, his army would cease to have a legal existence; and the refusal of either house to concur in the mutiny bill would at once wrest the sword out of his grasp. By the bill of rights it is declared unlawful to keep any forces in time of peace without consent of parliament. This consent, by an invariable and wholesome usage, is given only from year to year: and its necessity may be considered perhaps the most powerful of those causes which have transferred so much even of the executive power into the management of the two houses of parliament.

§ 25. The reign of William is also distinguished by the provisions introduced into our law for the security of the subject against iniquitous condemnations on the charge of high treason, and intended to perfect those of earlier times, which had proved insufficient against the partiality of judges.⁵

A bill for regulating trials upon charges of high treason passed the commons with slight resistance from the crown lawyers in 1691. The lords introduced a provision in their own favour, that, upon the trial of a peer in the court of the high steward, all such as were entitled to vote should be regularly summoned, it having been the practice to select twenty-three at the discretion of the crown. The

⁵ The disquisition of the author upon the history of our constitutional law on treason

from the beginning is inserted as a note at the end of this chapter.

who wished to hinder the bill availed themselves of the jealousy which the commons in that age entertained of the upper house of parliament, and persuaded them to disagree with this just and reasonable amendment. It fell to the ground, therefore, on this occasion, and, though more than once revived in subsequent sessions, the same difference between the two houses continued to be insuperable. In the new parliament that met in 1695 the commons had the good sense to recede from an irrational jealousy. Notwithstanding the reluctance of the ministry, for which perhaps the very dangerous position of the king's government furnishes an apology, this excellent statute was enacted as an additional guarantee (in such bad times as might again occur) to those who are prominent in their country's cause, against the great danger of false accusers and iniquitous judges. It provides that all persons indicted for high treason shall have a copy of their indictment delivered to them five days before their trial, a period extended by a subsequent act to ten days, and a copy of the panel of jurors two days before their trial; that they shall be allowed to have their witnesses examined on oath, and to make their defence by counsel. It clears up any doubt that could be pretended on the statute of Edward VI., by requiring two witnesses, either both to the same overt act, or the first to one, the second to another overt act of the same treason (that is, the same kind of treason), unless the party shall voluntarily confess the charge. It limits prosecutions for treason to the term of three years, except in the case of an attempted assassination on the king. It includes the contested provision for the trial of peers by all who have a right to sit and vote in parliament. A later statute, 7 Anne, c. 21, which may be mentioned here as the complement of the former, has added a peculiar privilege to the accused, hardly less material than any of the rest. Ten days before the trial, a list of the witnesses intended to be brought for proving the indictment, with their professions and places of abode, must be delivered to the prisoner, along with the copy of the indictment. The operation of this clause was suspended till after the death of the pretended prince of Wales.

Notwithstanding a hasty remark of Burnet, that the design of this bill seemed to be to make men as safe in all treasonable practices as possible, it ought to be considered a valuable accession to our constitutional law; and no part, I think, of either statute will be reckoned inexpedient, when we reflect upon the history of all nations, and more especially of our own. The history of all nations, and more especially of our own, in the fresh recollection of those who took a share in these acts, teaches us that false accusers are always encouraged by a bad government, and may easily deceive a good one. A prompt belief in the spies whom they perhaps

bitterest invectives of Jacobitism were circulated in the first four years after the Revolution.

The liberty of the press consists, in a strict sense, merely in an exemption from the superintendence of a licenser. But it cannot be said to exist in any security, or sufficiently for its principal ends, where discussions of a political or religious nature, whether general or particular, are restrained by too narrow and severe limitations. The law of libel has always been indefinite—an evil probably beyond any complete remedy, but which evidently renders the liberty of free discussion rather more precarious in its exercise than might be wished. It appears to have been the received doctrine in Westminster Hall before the Revolution, that no man might publish a writing reflecting on the government, nor upon the character or even capacity and fitness of any one employed in it. Nothing having passed to change the law, the law remained as before. Hence in the case of *Tutchin*, it is laid down by Holt that to possess the people with an ill opinion of the government, that is, of the ministry, is a libel. And the attorney-general, in his speech for the prosecution, urges that there can be no reflection on those that are in office under her majesty, but it must cast some reflection on the queen who employs them. Yet in this case the censure upon the administration, in the passages selected for prosecution, was merely general and without reference to any person, upon which the counsel for *Tutchin* vainly relied.

It is manifest that such a doctrine was irreconcilable with the interests of any party out of power, whose best hope to regain it is commonly by prepossessing the nation with a bad opinion of their adversaries. Nor would it have been possible for any ministry to stop the torrent of a free press, under the secret guidance of a powerful faction, by a few indictments for libel. They found it generally more expedient and more agreeable to borrow weapons from the same armoury, and retaliate with unsparing invective and calumny. This was first practised (first, I mean, with the avowed countenance of government) by Swift, in the *Examiner* and some of his other writings. And both parties soon went such lengths in this warfare, that it became tacitly understood that the public characters of statesmen and the measures of administration are the fair topics of pretty severe attack.⁷ Less than this, indeed, would not have contented the political temper of the nation, gradually and

⁷ The reign of Anne was the era of periodical politics. *Gutta cavat lapidem, non vi, sed sæpe cadendo*. We well know how forcibly this line describes the action of the regular press. It did not begin to operate much before 1704 or 1705, when the whigs came into office, and the rejection

of the occasional conformity bill blew up a flame in the opposite party. But even then it was confined to periodical papers, such as the *Observer* or *Rehearsal*; for the common newspapers were as yet hardly at all political.

without intermission becoming more democratical, and more capable, as well as more accustomed, to judge of its general interests and of those to whom they were intrusted. The just limit between political and private censure has been far better drawn in these later times, licentious as we still may justly deem the press, than in an age when courts of justice had not deigned to acknowledge, as they do at present, its theoretical liberty. No writer, except of the most broken reputation, would venture at this day on the malignant calumnies of Swift.

§ 27. Meanwhile the judges naturally adhered to their established doctrine; and, in prosecutions for political libels, were very little inclined to favour what they deemed the presumption, if not the licentiousness of the press. They advanced a little farther than their predecessors; and, contrary to the practice both before and after the Revolution, laid it down at length as an absolute principle, that falsehood, though always alleged in the indictment, was not essential to the guilt of the libel; refusing to admit its truth to be pleaded, or given in evidence, or even urged by way of mitigation of punishment. But as the defendant could only be convicted by the verdict of a jury, and jurors both partook of the general sentiment in favour of free discussion, and might in certain cases have acquired some prepossessions as to the real truth of the supposed libel, which the court's refusal to enter upon it could not remove, they were often reluctant to find a verdict of guilty; and hence arose by degrees a sort of contention which sometimes showed itself upon trials, and divided both the profession of the law and the general public. The judges and lawyers, for the most part, maintained that the province of the jury was only to determine the fact of publication; and also whether what are called the innuendoes were properly filled up, that is, whether the libel meant that which it was alleged in the indictment to mean, not whether such meaning were criminal or innocent, a question of law which the court were exclusively competent to decide. That the jury might acquit at their pleasure was undeniable; but it was asserted that they would do so in violation of their oaths and duty, if they should reject the opinion of the judge by whom they were to be guided as to the general law. Others of great name in our jurisprudence, and the majority of the public at large, conceiving that this would throw the liberty of the press altogether into the hands of the judges, maintained that the jury had a strict right to take the whole matter into their consideration, and determine the defendant's criminality or innocence according to the nature and circumstances of the publication. This controversy, which perhaps hardly arose within the period to which the present work relates, was settled by Mr. Fox's libel bill in 1792. It declares the right of the jury to find a general verdict upon the

matters." It was of course necessary to follow this recommendation. But the lower house of convocation, as might be foreseen, threw every obstacle in the way of their king's enlarged policy. They chose a man as their prolocutor who had been forward in the worst conduct of the university of Oxford. They displayed in everything a factious temper, which held the very names of concession and conciliation in abhorrence. Meanwhile a commission of divines, appointed under the great seal, had made a revision of the liturgy, in order to eradicate everything which could give a plausible ground of offence, as well as to render the service more perfect. Those of the high-church faction had soon seceded from this commission;³ and its deliberations were doubtless the more honest and rational for their absence. But, as the complacence of parliament towards ecclesiastical authority had shown that no legislative measure could be forced against the resistance of the lower house of convocation, it was not thought expedient to lay before that ill-affected body the revised liturgy which they would have employed as an engine of calumny against the bishops and the crown. The scheme of comprehension, therefore, fell absolutely and finally to the ground.

§ 30. A similar relaxation of the terms of conformity would, in the reign of Elizabeth, or even at the time of the Savoy conferences, have brought back so large a majority of dissenters that the separation of the remainder could not have afforded any colour of alarm to the most jealous dignitary. Even now it is said that two-thirds of the nonconformists would have embraced the terms of reunion. But the motives of dissent were already somewhat changed, and had come to turn less on the petty scruples of the elder puritans, and on the differences in ecclesiastical discipline, than on a dislike to all subscriptions of faith and compulsory uniformity. The dissenting ministers, accustomed to independence, and finding not unfrequently in the contributions of their disciples a better maintenance than court favour and private patronage have left for diligence and piety in the establishment, do not seem to have much regretted the fate of this measure. None of their friends, in the most favourable times, have ever made an attempt to renew it.

A still more material reason against any alteration in the public liturgy and ceremonial religion at that feverish crisis, unless with a much more decided concurrence of the nation than could be obtained, was the risk of nourishing the schism of the nonjurors. These men went off from the church on grounds merely political, or at most on the pretence that the civil power was incompetent to deprive

³ The words high and low church are said by Swift in the Examiner to have come in soon after the revolution. And probably they were not in common use before. But

I find "high-church" named in a pamphlet of the reign of Charles II. It is in the Harleian Miscellany; but I have not got any more distinct reference.

bishops of their ecclesiastical jurisdiction; to which none among the laity, who did not adopt the same political tenets, were likely to pay attention. But the established liturgy was, as it is at present in the eyes of the great majority, the distinguishing mark of the Anglican church; far more indeed than episcopal government, whereof so little is known by the mass of the people that its abolition, if we may utter such a paradox, would make no perceptible difference in their religion. Any change, though for the better, would offend those prejudices of education and habit which it requires such a revolutionary commotion of the public mind as the sixteenth century witnessed to subdue, and might fill the jacobite conventicles with adherents to the old church. It was already the policy of the nonjuring clergy to hold themselves up in this respectable light, and to treat the Tillotsons and Burnets as equally schismatic in discipline and unsound in theology. Fortunately, however, they fell into the snare which the established church had avoided; and deviating, at least in their writings, from the received standard of Anglican orthodoxy, into what the people saw with most jealousy, a sort of approximation to the church of Rome, gave their opponents an advantage in controversy, and drew farther from that part of the clergy who did not much dislike their political creed. They were equally injudicious and neglectful of the signs of the times, when they promulgated such extravagant assertions of sacerdotal power as could not stand with the regal supremacy, or any subordination to the state. It was plain, from the writings of Leslie and other leaders of their party, that the mere restoration of the house of Stuart would not content them, without undoing all that had been enacted as to the church from the time of Henry VIII.; and thus the charge of innovation came evidently home to themselves.

§ 31. The convention parliament would have acted a truly politic, as well as magnanimous part, in extending this boon, or rather this right, of religious liberty to the members of that unfortunate church for whose sake the late king had lost his throne. It would have displayed to mankind that James had fallen, not as a catholic, nor for seeking to bestow toleration on catholics, but as a violator of the constitution. William, in all things superior to his subjects, knew that temporal, and especially military fidelity, would be in almost every instance proof against the seductions of bigotry. The Dutch armies have always been in a great measure composed of catholics; and many of that profession served under him in the invasion of England. His own judgment for the repeal of the penal laws had been declared even in the reign of James. The danger, if any, was now immensely diminished; and it appears in the highest degree probable that a genuine

toleration of their worship, with no condition but the oath of allegiance, would have brought over the majority of that church to the protestant succession, so far at least as to engage in no schemes inimical to it.

The tories, in their malignant hatred of our illustrious monarch, turned his connivance at popery into a theme of reproach. It was believed, and probably with truth, that he had made to his catholic allies promises of relaxing the penal laws; and the jacobite intriguers had the mortification to find that William had his party at Rome, as well as her exiled confessor of St. Germain's. After the peace of Ryswick many priests came over, and showed themselves with such incautious publicity as alarmed the bigotry of the house of commons and produced the disgraceful act of 1700 against the growth of popery. The admitted aim of this statute was to expel the catholic proprietors of land, comprising many very ancient and wealthy families, by rendering it necessary for them to sell their estates. It first offers a reward of 100*l.* to any informer against a priest exercising his functions, and adjudges the penalty of perpetual imprisonment. It requires every person educated in the popish religion, or professing the same, within six months after he shall attain the age of eighteen years, to take the oaths of allegiance and supremacy, and subscribe the declaration set down in the act of Charles II. against transubstantiation and the worship of saints; in default of which he is incapacitated, not only to purchase, but to inherit or take lands under any devise or limitation. The next of kin being a protestant shall enjoy such lands during his life. So unjust, so unprovoked a persecution is the disgrace of that parliament. But the spirit of liberty and tolerance was too strong for the tyranny of the law; and this statute was not executed according to its purpose. The catholic landholders neither renounced their religion, nor abandoned their inheritances. The judges put such constructions upon the clause of forfeiture as eluded its efficacy; and, I believe, there were scarce any instances of a loss of property under this law. The laws were perhaps not much less severe and sanguinary than those which oppressed the protestants of France; but, in the actual administration, what a contrast between the government of George II. and Louis XV.—between the gentleness of an English court or king's bench and the ferocity of the parliaments of Aix and Toulouse!

§ 32. The immediate settlement of the crown at the Revolution, extended only to the descendants of Anne and of William. The former was at that time pregnant, and became in a few months the mother of a son. Nothing therefore urged the convention parliament

to go any farther in limiting the succession. But the king, in order to secure the elector of Hanover to the grand alliance, was desirous to settle the reversion of the crown on his wife, the princess Sophia, and her posterity. A provision to this effect was inserted in the bill of rights by the house of lords. But the commons rejected the amendment with little opposition; not, as Burnet idly insinuates, through the secret wish of a republican party (which never existed, or had no influence) to let the monarchy die a natural death, but from a just sense that the provision was unnecessary and might become inexpedient. During the life of the young duke of Gloucester the course of succession appeared clear; but upon his untimely death in 1700, the manifest improbability that the limitations already established could subsist beyond the lives of the king and princess of Denmark made it highly convenient to preclude intrigue, and cut off the hopes of the jacobites, by a new settlement of the crown on a protestant line of princes. Though the choice was truly free in the hands of parliament, and no pretext of absolute right could be advanced on any side, there was no question that the princess Sophia was the fittest object of the nation's preference. She was indeed very far removed from any hereditary title. Besides the pretended prince of Wales, and his sister, whose legitimacy no one disputed, there stood in her way the duchess of Savoy, daughter of Henrietta duchess of Orleans, and several of the Palatine family. These last had abjured the reformed faith, of which their ancestors had been the strenuous assertors; but it seemed not improbable that some one might return to it; and, if all hereditary right of the ancient English royal line, the descendants of Henry VII., had not been extinguished, it would have been necessary to secure the succession of any prince who should profess the protestant religion at the time when the existing limitations should come to an end. According to the tenor and intention of the act of settlement, all prior claims of inheritance, save that of the issue of king William and the princess Anne, being set aside and annulled, the princess Sophia became the source of a new royal line. The throne of England and Ireland, by virtue of the paramount will of parliament, stands entailed upon the heirs of her body, being protestants. In them the right is as truly hereditary as it ever was in the Plantagenets or the Tudors. But they derive it not from those ancient families. The blood indeed of Cerdic and of the Conqueror flows in the veins of her present majesty. Our Edwards and Henries illustrate the almost unrivalled splendour and antiquity of the house of Brunswick; but they have transmitted no more right to the allegiance of England than Boniface of Este or Henry the Lion; that rests wholly on the act of settlement, and resolves itself into the sovereignty of the legislature.

The majority of that house of commons which passed the bill of settlement consisted of those who, having long opposed the administration of William, though with very different principles both as to the succession of the crown and its prerogative, were now often called by the general name of tories. Some, no doubt, of these were adverse to a measure which precluded the restoration of the house of Stuart, even on the contingency that its heir might embrace the protestant religion. But this party could not show itself very openly; and Harley, the new leader of the tories, zealously supported the entail of the crown on the princess Sophia. But it was determined to accompany this settlement with additional securities for the subject's liberty. The bill of rights was reckoned hasty and defective; some matters of great importance had been omitted, and, in the twelve years which had since elapsed, new abuses had called for new remedies. Eight articles were therefore inserted in the act of settlement, to take effect only from the commencement of the new limitation to the house of Hanover. Some of them, as will appear, sprung from a natural jealousy of this unknown and foreign line; some should, strictly, not have been postponed so long; but it is necessary to be content with what it is practicable to obtain.

§ 33. These articles are the following :—

That whosoever shall hereafter come to the possession of this crown shall join in communion with the church of England as by law established.

That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England, without the consent of parliament.

That no person who shall hereafter come to the possession of this crown shall go out of the dominions of England, Scotland, or Ireland, without consent of parliament.

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the privy council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the privy council as shall advise and consent to the same.

That, after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen—except such as are born of English parents), shall be capable to be of the privy council, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or heredita-

ments, from the crown to himself, or to any other or others in trust for him.

That no person who has an office or place of profit under the king, or receives a pension from the crown, shall be capable of serving as a member of the house of commons.

That, after the said limitation shall take effect as aforesaid, judges' commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but, upon the address of both houses of parliament, it may be lawful to remove them.

That no pardon under the great seal of England be pleadable to an impeachment by the commons in parliament.

The first of these provisions was well adapted to obviate the jealousy which the succession of a new dynasty, bred in a protestant church not altogether agreeing with our own, might excite in our susceptible nation. A similar apprehension of foreign government produced the second article, which so far limits the royal prerogative that any minister who could be proved to have advised or abetted a declaration of war in the specified contingency would be criminally responsible to parliament. The third article was repealed very soon after the accession of George I., whose frequent journeys to Hanover were an abuse of the graciousness with which the parliament consented to annul the restriction.

§ 34. A very remarkable alteration that had been silently wrought in the course of the executive government gave rise to the fourth of the remedial articles in the act of settlement. According to the original constitution of our monarchy, the king had his privy council, composed of the great officers of state, and of such others as he should summon to it, bound by an oath of fidelity and secrecy; by whom all affairs of weight, whether as to domestic or exterior policy, were debated, for the most part in his presence, and determined, subordinately of course to his pleasure, by the vote of the major part. It could not happen but that some counsellors more eminent than the rest should form juntas or cabals, for more close and private management, or be selected as more confidential advisers of their sovereign; and the very name of a cabinet council, as distinguished from the larger body, may be found as far back as the reign of Charles I. But the resolutions of the crown, whether as to foreign alliances or the issuing of proclamations and orders at home, or any other overt act of government, were not finally taken without the deliberation and assent of that body whom the law recognised as its sworn and notorious counsellors. This was first broken in upon after the Restoration, and especially after the fall of Clarendon—a strenuous assertor of the rights and dignity of the privy council. “The king,” as he complains, “had in his nature so little reverence and esteem for antiquity, and did in truth so much condemn old

orders, forms, and institutions, that the objection of novelty rather advanced than obstructed any proposition." He wanted to be absolute on the French plan, for which both he and his brother, as the same historian tells us, had a great predilection, rather than obtain a power little less arbitrary, so far at least as private rights were concerned, on the system of his three predecessors. The delays and the decencies of a regular council, the continual hesitation of lawyers, were not suited to his temper, his talents, or his designs. And it must indeed be admitted that the privy council, even as it was then constituted, was too numerous for the practical administration of supreme power. Thus by degrees it became usual for the ministry or cabinet to obtain the king's final approbation of their measures, before they were laid, for a merely formal ratification, before the council. It was one object of sir William Temple's short-lived scheme in 1679 to bring back the ancient course; the king pledging himself, on the formation of his new privy council, to act in all things by its advice.

During the reign of William this distinction of the cabinet from the privy council, and the exclusion of the latter from all business of state, became more fully established. This, however, produced a serious consequence as to the responsibility of the advisers of the crown; and at the very time when the controlling and chastising power of parliament was most effectually recognized, it was silently eluded by the concealment in which the objects of its inquiry could wrap themselves. Thus, in the instance of a treaty which the house of commons might deem mischievous and dishonourable, the chancellor setting the great seal to it would of course be responsible; but it is not so evident that the first lord of the treasury, or others more immediately advising the crown on the course of foreign policy, could be liable to impeachment, with any prospect of success, for an act in which their participation could not be legally proved. I do not mean that evidence may not possibly be obtained which would affect the leaders of the cabinet, as in the instances of Oxford and Bolingbroke; but that, the cabinet itself having no legal existence, and its members being surely not amenable to punishment in their simple capacity of privy councillors, which they generally share, in modern times, with a great number even of their adversaries, there is no tangible character to which responsibility is attached; nothing, except a signature or the setting of a seal, from which a bad minister need entertain any further apprehension than that of losing his post and reputation.

William III., from the reservedness of his disposition, as well as from the great superiority of his capacity for affairs to any of our former kings, was far less guided by any responsible counsellors than the spirit of our constitution requires. In the business of the parti-

tion treaty, which, whether rightly or otherwise, the house of commons reckoned highly injurious to the public interest, he had not even consulted his cabinet; nor could any minister, except the earl of Portland and lord Somers, be proved to have had a concern in the transaction; for, though the house impeached lord Orford and lord Halifax, they were not in fact any further parties to it than by being in the secret, and the former had shown his usual intractability by objecting to the whole measure. This was undoubtedly such a departure from sound constitutional usage as left parliament no control over the executive administration. It was endeavoured to restore the ancient principle by this provision in the act of settlement, that, after the accession of the house of Hanover, all resolutions as to government should be debated in the privy council, and signed by those present. But, whether it were that real objections were found to stand in the way of this article or that ministers shrank back from so definite a responsibility, they procured its repeal a very few years afterwards. The plans of government are discussed and determined in a cabinet council, forming indeed part of the larger body but unknown to the law by any distinct character or special appointment. I conceive, though I have not the means of tracing the matter clearly, that this change has prodigiously augmented the direct authority of the secretaries of state, especially as to the interior department, who communicate the king's pleasure in the first instance to subordinate officers and magistrates, in cases which, down at least to the time of Charles I., would have been determined in council. But proclamations and orders still emanate, as the law requires, from the privy council; and on some rare occasions, even of late years, matters of domestic policy have been referred to their advice. It is generally understood, however, that no councillor is to attend, except when summoned;¹⁰ so that, unnecessarily numerous as the council has become, these special meetings consist only of a few persons besides the actual ministers of the cabinet and give the latter no apprehension of a formidable resistance. Yet there can be no reasonable doubt that every councillor is as much answerable for the measures adopted by his consent, and especially when ratified by his signature, as those who bear the name of ministers, and who have generally determined upon them before he is summoned.

The experience of William's partiality to Bentinck and Keppel, in the latter instance not very consistent with the good sense and dignity of his character, led to a strong measure of precaution

¹⁰ This is the modern usage, but of its origin I cannot speak. On one remarkable occasion, while Anne was at the point of death, the dukes of Somerset and Argyle

went down to the council-chamber without summons to take their seats but it seems to have been intended as an unexpected manoeuvre of policy.

against the probable influence of foreigners under the new dynasty; the exclusion of all persons not born within the dominions of the British crown from every office of civil and military trust, and from both houses of parliament. No other country, as far as I recollect, has adopted so sweeping a disqualification; and it must, I think, be admitted that it goes a greater length than liberal policy can be said to warrant. But the narrow prejudices of George I. were well restrained, by this provision, from gratifying his corrupt and servile German favourites with lucrative offices.

§ 35. The next article is of far more importance; and would, had it continued in force, have perpetuated that struggle between the different parts of the legislature, especially the crown and house of commons, which the new limitations of the monarchy were intended to annihilate. The baneful system of rendering the parliament subservient to the administration, either by offices and pensions held at pleasure or by more clandestine corruption, had not ceased with the house of Stuart. William, not long after his accession, fell into the worst part of this management, which it was most difficult to prevent; and, according to the practice of Charles's reign, induced by secret bribes the leaders of parliamentary opposition to betray their cause on particular questions. The tory patriot, sir Christopher Musgrave, trod in the steps of the whig patriot, sir Thomas Lee. A large expenditure appeared every year, under the head of secret-service money; which was pretty well known, and sometimes proved, to be disposed of, in great part, among the members of both houses.¹¹ No check was put on the number or quality of placemen in the lower house. New offices were continually created, and at unreasonable salaries. Those who desired to see a regard to virtue and liberty in the parliament of England could not be insensible to the enormous mischief of this influence. But in seeking for a remedy against the peculiar evil of the times, the party in opposition to the court during this reign, whose efforts at reformation were too frequently misdirected either through faction or some sinister regards towards the deposed family, went into the preposterous extremity of banishing all servants of the crown from the house of commons. Whether the bill for free and impartial proceedings in parliament, which was rejected by a very small majority of the house of lords in 1693, and, having in the next session passed through both houses, met with the king's negative, to the great disappointment and di-

¹¹ Burnet says, p. 42, that sir John Trevor, a tory, first put the king on this method of corruption. Trevor himself was so venal that he received a present of 1000 guineas from the city of London, being then speaker of the commons, for

his service in carrying a bill through the house; and, upon its discovery, was obliged to put the vote that he had been guilty of a high crime and misdemeanour. This resolution being carried, he absented himself from the house, and was expelled.

pleasure of the commons, was of this general nature, or excluded only certain specified officers of the crown, I am not able to determine; though the prudence and expediency of William's refusal must depend entirely upon that question. But in the act of settlement the clause is quite without exception; and if it had ever taken effect, no minister could have had a seat in the house of commons, to bring forward, explain, or defend the measures of the executive government. Such a separation and want of intelligence between the crown and parliament must either have destroyed the one or degraded the other. The house of commons would either, in jealousy and passion, have armed the strength of the people to subvert the monarchy, or, losing that effective control over the appointment of ministers which has sometimes gone near to their nomination, would have fallen almost into the condition of those states-general of ancient kingdoms, which have met only to be cajoled into subsidies and give a passive consent to the propositions of the court. It is one of the greatest safeguards of our liberty that eloquent and ambitious men, such as aspire to guide the counsels of the crown, are, from habit and use, so connected with the houses of parliament, and derive from them so much of their renown and influence, that they lie under no temptation; nor could, without insanity, be prevailed upon to diminish the authority and privileges of that assembly. No English statesman, since the Revolution, can be liable to the very slightest suspicion of an aim, or even a wish, to establish absolute monarchy on the ruins of our constitution. Whatever else has been done, or designed to be done amiss, the rights of parliament have been out of danger. They have, whenever a man of powerful mind shall direct the cabinet, and none else can possibly be formidable, the strong security of his own interest, which no such man will desire to build on the caprice and intrigue of a court. And, as this immediate connection of the advisers of the crown with the house of commons, so that they are, and ever profess themselves, as truly the servants of one as of the other, is a pledge for their loyalty to the entire legislature as well as to their sovereign (I mean, of course, as to the fundamental principles of our constitution), so has it preserved for the commons their preponderating share in the executive administration, and elevated them in the eyes of foreign nations, till the monarchy itself has fallen comparatively into shade. The pulse of Europe beats according to the tone of our parliament; the counsels of our kings are there revealed, and, by that kind of previous sanction which it has been customary to obtain, become, as it were, the resolutions of a senate; and we enjoy the individual pride and dignity which belong to republicans, with the steadiness and tranquillity which the supremacy of a single person has been supposed peculiarly to bestow.

But, if the chief ministers of the crown are indispensably to be present in one or other house of parliament, it by no means follows that the doors should be thrown open to all those subaltern retainers, who, too low to have had any participation in the measures of government, come merely to earn their salaries by a sure and silent vote. Unless some limitation could be put on the number of such officers, they might become the majority of every parliament, especially if its duration were indefinite or very long. It was always the popular endeavour of the opposition, or, as it was usually denominated, the country party, to reduce the number of these dependents; and as constantly the whole strength of the court was exerted to keep them up. William, in truth, from his own errors, and from the disadvantage of the times, would not venture to confide in an unbiassed parliament. On the formation, however, of a new board of revenue, in 1694, for managing the stamp-duties, its members were incapacitated from sitting in the house of commons. This, I believe, is the first instance of exclusion on account of employment; and a similar act was obtained in 1699, extending this disability to the commissioners and some other officers of excise. But when the absolute exclusion of all civil and military officers by the act of settlement was found, on cool reflection, too impracticable to be maintained, and a revision of that article took place in the year 1706, the house of commons were still determined to preserve at least the principle of limitation as to the number of placemen within their walls. They gave way indeed to the other house in a considerable degree, receding, with some unwillingness, from a clause specifying expressly the description of offices which should not create a disqualification, and consenting to an entire repeal of the original article. But they established two provisions of great importance, which still continue the great securities against an overwhelming influence: first, that every member of the house of commons accepting an office under the crown, except a higher commission in the army, shall vacate his seat, and a new writ shall issue; secondly, that no person holding an office created since the 25th of October, 1705, shall be capable of being elected or re-elected at all. They excluded at the same time all such as held pensions during the pleasure of the crown; and, to check the multiplication of placemen, enacted that no greater number of commissioners should be appointed to execute any office than had been employed in its execution at some time before that parliament.

§ 36. It had been the practice of the Stuarts, especially in the last years of their dynasty, to dismiss judges, without seeking any other pretence, who showed any disposition to thwart government in political prosecutions. The general behaviour of the bench had

covered it with infamy. Though the real security for an honest court of justice must be found in their responsibility to parliament and to public opinion, it was evident that their tenure in office must, in the first place, cease to be precarious, and their integrity rescued from the severe trial of forfeiting the emoluments upon which they subsisted. In the debates previous to the declaration of rights, we find that several speakers insisted on making the judges' commissions *quamdiu se bene gesserint*—that is, during life or good behaviour, instead of *durante placito*, at the discretion of the crown. The former, indeed, is said to have been the ancient course till the reign of James I. But this was omitted in the hasty and imperfect bill of rights. The commissions, however, of William's judges ran *quamdiu se bene gesserint*. But the king gave an unfortunate instance of his very injudicious tenacity of bad prerogatives in refusing his assent, in 1692, to a bill that had passed both houses for establishing this independence of the judges by law, and confirming their salaries. We owe this important provision to the act of settlement; not, as ignorance and adulation have perpetually asserted, to his late majesty George III. No judge can be dismissed from office, except in consequence of a conviction for some offence, or the address of both houses of parliament, which is tantamount to an act of the legislature. It is always to be kept in mind that they are still accessible to the hope of further promotion, to the zeal of political attachment, to the flattery of princes and ministers; that the bias of their prejudices, as elderly and peaceable men, will, in a plurality of cases, be on the side of power; that they have very frequently been trained, as advocates, to vindicate every proceeding of the crown: from all which we should look on them with some little vigilance, and not come hastily to a conclusion that, because their commissions cannot be vacated by the crown's authority, they are wholly out of the reach of its influence. I would by no means be misinterpreted, as if the general conduct of our courts of justice since the Revolution, and especially in later times, which in most respects have been the best times, were not deserving of that credit it has usually gained; but possibly it may have been more guided and kept straight than some are willing to acknowledge by the spirit of observation and censure which modifies and controls our whole government.

The last clause in the act of settlement, that a pardon under the great seal shall not be pleadable in bar of an impeachment, requires no particular notice beyond what has been said on the subject in a former chapter.

§ 37. In the following session, a new parliament having been assembled, in which the tory faction had less influence than in the

last, and Louis XIV. having in the mean time acknowledged the son of James as king of England, the natural resentment of this insult and breach of faith was shown in a more decided assertion of Revolution principles than had hitherto been made. The pretended king was attainted of high treason; a measure absurd as a law, but politic as a denunciation of perpetual enmity. It was made high treason to correspond with him, or remit money for his service; and a still more vigorous measure was adopted—an oath to be taken, not only by all civil officers but by all ecclesiastics, members of the universities, and schoolmasters, acknowledging William as lawful and rightful king, and denying any right or title in the pretended prince of Wales. The tories, and especially lord Nottingham, had earnestly contended, in the beginning of the king's reign, against those words in the act of recognition which asserted William and Mary to be rightfully and lawfully king and queen. They opposed the association at the time of the assassination-plot, on account of the same epithets, taking a distinction which satisfied the narrow understanding of Nottingham, and served as a subterfuge for more cunning men, between a king whom they were bound in all cases to obey and one whom they could style rightful and lawful. These expressions were in fact slightly modified on that occasion; yet fifteen peers and ninety-two commoners declined, at least for a time, to sign it. The present oath of abjuration therefore was a signal victory of the whigs who boasted of the Revolution over the tories who excused it. The renunciation of the hereditary right, for at this time few of the latter party believed in the young man's spuriousness, was complete and unequivocal. The dominant faction might enjoy perhaps a charitable pleasure in exposing many of their adversaries, and especially the high-church clergy, to the disgrace and remorse of perjury. Few or none, however, who had taken the oath of allegiance refused this additional cup of bitterness, though so much less defensible, according to the principles they had employed to vindicate their compliance in the former instance; so true it is that in matters of conscience the first scruple is the only one which it costs much to overcome. But the imposition of this test, as was evident in a few years, did not check the boldness or diminish the numbers of the Jacobites; and I must confess that, of all sophistry that weakens moral obligation, that is the most pardonable which men employ to escape from this species of tyranny. The state may reasonably make an entire and heartfelt attachment to its authority the condition of civil trust; but nothing more than a promise of peaceable obedience can justly be exacted from those who ask only to obey in peace. There was a bad spirit abroad in the church, ambitious, factious, intolerant, calumnious; but this

Spiritual and Temporal, and divers principal persons of the Commons) cause letters to be written to the Lords Spiritual and Temporal, being protestants; and other letters to the several counties, cities, universities, boroughs, and cinque-ports, for the choosing of such persons to represent them as were of right to be sent to parliament, to meet and sit at Westminster upon the 22nd day of January, in this year 1688, in order to such an establishment as that their religion, laws, and liberties might not again be in danger of being subverted; upon which letters elections have been accordingly made.

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective letters and elections, being now assembled in a full and free representation of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid, do in the first place (as their ancestors in like case have usually done), for the vindicating and asserting their ancient rights and liberties, declare:—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the Crown, by pretence and prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are protestants may have arms for their defence suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free.

9. That the freedom of speech, and debates or proceedings in parliament,

ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impanelled and returned, and jurors who pass upon men in trials for high treason ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

13. And that for redress of all grievances and for the amending, strengthening, and preserving of the laws, parliament ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example:

To which demand of their rights they are particularly encouraged by the declaration of his highness the prince of Orange, as being the only means for obtaining a full redress and remedy therein:

Having therefore an entire confidence that his said highness the prince of Orange will perfect the deliverance so far advanced by him, and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights, and liberties:

II. The said Lords Spiritual and Temporal, and Commons, assembled at Westminster, do resolve, that William and Mary, prince and princess of Orange, be, and be declared, king and queen of England, France, and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said prince and princess during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only to and executed by the said prince of Orange, in the names of the said prince and princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said princess; and for default of such issue, to the prince's Ancestry

Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of the said prince of Orange. And the Lords Spiritual and Temporal, and Commons, do pray the said prince and princess to accept the same accordingly.

III. And that the oaths hereafter mentioned be taken by all persons of whom the oaths of allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to their majesties King William and Queen Mary: So help me God.

I, A. B., do swear that I do from my heart abhor, detest, and asjure as impious and heretical, that damnable doctrine and position that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate hath, or ought to have, any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm: So help me God.

IV. Upon which their said majesties did accept the crown and royal dignity of the kingdoms of England, France, and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration.

V. And thereupon their majesties were pleased that the said Lords Spiritual and Temporal, and Commons, being the two houses of parliament, should continue to sit, and with their majesties' royal concurrence make effectual provision for the settlement of the religion, laws, and liberties of this kingdom, so that the same for the future might not be in danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly.

VI. Now, in pursuance of the premises, the said Lords Spiritual and Temporal, and Commons, in parliament assembled, for the ratifying, confirming, and establishing the said declaration, and the articles, clauses, matters, and things therein contained, by the force of a Law made in due form by authority of parliament, do pray that it may be declared and enacted, that all and singular the rights

and liberties asserted and claimed in the said declaration are the true, ancient, and inalienable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their majesties and their successors according to the same in all times to come.

VII. And the said Lords Spiritual and Temporal, and Commons, seriously considering how it hath pleased Almighty God, in his marvellous providence and merciful goodness to this nation, to provide and preserve their said majesties' royal persons most happily to reign over us upon the thrones of their ancestors, for which they render unto Him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly, and in the sincerity of their hearts, think, and do hereby recognise, acknowledge, and declare that, King James II. having abdicated the government, and their majesties having accepted the crown and royal dignity as aforesaid, their said majesties did become, were, are, and of right ought to be, by the laws of this realm, our sovereign liege lord and lady, king and queen of England, France, and Ireland, and the dominions thereunto belonging, in and to whose princely persons the royal state, crown, and dignity of the said realms, with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions, and authorities to the same belonging and appertaining, are most fully, rightfully and entirely invested and incorporated, united and annexed.

VIII. And for preventing all questions and divisions in this realm, by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquillity, and safety of this nation doth, under God, wholly consist and depend, the said Lords Spiritual and Temporal, and Commons, do beseech their majesties that it may be enacted, established, and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said majesties, or

during their lives, and the life of the survivor of them. And that the entire, perfect, and full exercise of the regal power and government be only in and executed by his majesty, in the names of both their majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her majesty; and for default of such issue, to her royal highness the princess Anne of Denmark and the heirs of her body; and for default of such issue, to the heirs of the body of his said majesty: And thereunto the said Lords Spiritual and Temporal, and Commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterities for ever; and do faithfully promise that they will stand to, maintain, and defend their said majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

IX. And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist; the said Lords Spiritual and Temporal, and Commons, do further pray that it may be enacted, that all and every person and persons that is, are, or shall be reconciled to, or shall hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded, and be for ever incapable to inherit, possess, or enjoy the crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to, and be enjoyed by such person or persons, being protestants, as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion, or professing, or marrying as aforesaid, were naturally dead.

X. And that every king and queen of this realm who at any time hereafter shall come to and succeed in the im-

perial crown of this kingdom shall, on the first day of the meeting of the first parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers, in the presence of the Lords and Commons therein assembled, or at his or her coronation, before such person or persons who shall administer the coronation oath to him or her, at the time of his or her taking the said oath (which shall first happen), make, subscribe, and audibly repeat the declaration mentioned in the statute made in the 13th year of the reign of king Charles II., intituled, 'An Act for the more effectual preserving the king's person and government, by disabling Papists from sitting in either House of Parliament.' But if it shall happen that such king or queen, upon his or her succession to the crown of this realm, shall be under the age of twelve years, then every such king or queen shall make, subscribe, and audibly repeat the said declaration at his or her coronation, or the first day of meeting of the first parliament as aforesaid, which shall first happen, after such king or queen shall have attained the said age of twelve years.

XI. All which their majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are, by their said majesties, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in parliament assembled, and by the authority of the same, declared, enacted, or established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, that from and after this present session of parliament no dispensation by non obstante of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

XIII. Provided that no charter, or grant, or pardon granted before the 23rd day of October, in the year of our Lord 1689, shall be any ways impeached or invalidated by this act, but that the same shall be and remain of the same force and effect in law, and no other than as if this act had never been made.

II. HISTORY OF THE LAW ON TREASON.

In the earlier ages of our law the crime of high treason appears to have been of a vague and indefinite nature, determined only by such arbitrary construction as the circumstances of each particular case might suggest. It was held treason to kill the king's father or his uncle; and Mortimer was attainted for accosting, as it was called, royal power; that is, for keeping the administration in his own hands, though without violence towards the reigning prince. But no people can enjoy a free constitution unless an adequate security is furnished by their laws against this discretion of judges in a matter so closely connected with the mutual relation between the government and its subjects. A petition was accordingly presented to Edward III. by one of the best parliaments that ever sat, requesting that, "whereas the king's justices in different counties adjudge men indicted before them to be traitors for divers matters not known by the commons to be treasonable, the king would, by his council, and the nobles and learned men (les grands et sages) of the land, declare in parliament what should be held for treason." The answer to this petition is in the words of the existing statute, which, as it is by no means so prolix as it is important, I shall place before the reader's eyes.

"Whereas divers opinions have been before this time in what case treason shall be said, and in what not; the king, at the request of the lords and commons, hath made a declaration in the manner as hereafter followeth: that is to say, when a man doth compass or imagine the death of our lord the king, of my lady his queen, or of their eldest son and heir; or if a man do violate the king's companion or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm, or be adherent to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and thereof be proveably attainted of open deed by people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into this realm, counterfeit to the money of England, as the money called Lusheburg, or other like to the said money of England, knowing the money to be false, to merchandise or make payment in deceit of our said lord the king and of

his people; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their place doing their offices; and it is to be understood that, in the cases above rehearsed, it ought to be judged treason which extends to our lord the king and his royal majesty. And of such treason the forfeiture of the escheats pertaineth to our lord the king, as well of the lands and tenements holden of others as of himself."

It seems impossible not to observe that the want of distinct arrangement, natural to so unphilosophical an age, and which renders many of our old statutes very confused, is eminently displayed in this strange conjunction of offences—where to counterfeit the king's seal, which might be for the sake of private fraud, and even his coin, which must be so, is ranged along with all that really endangers the established government, with conspiracy and insurrection. But this is an objection of little magnitude compared with one that arises out of an omission in enumerating the modes whereby treason could be committed. In most other offences the intention, however manifest, the contrivance, however deliberate, the attempt, however casually rendered abortive, form so many degrees of malignity, or at least of mischief, which the jurisprudence of most countries, and none more, at least formerly, than England, has been accustomed to distinguish from the perpetrated action by awarding an inferior punishment, or even none at all. Nor is this distinction merely founded on a difference in the moral indignation with which we are impelled to regard an inchoated and a consummate crime, but is warranted by a principle of reason, since the penalties attached to the completed offence spread their terror over all the machinations preparatory to it; and he who fails in his stroke has had the murderer's fate as much before his eyes as the more dexterous assassin. But those who conspire against the constituted government connect in their sanguine hope the assurance of impunity with the execution of their crime, and would justly deride the mockery of an accusation which could only be preferred against them when their banners were unfurled and their force arrayed. It is as reasonable, therefore, as it is conformable to the usages of every country, to place conspiracies against the sovereign power upon the footing of actual rebellion, and to crush those by the penal-

tles of treason who, were the law to wait for their opportunity, might silence or pervert the law itself. Yet in this famous statute we find it only declared treasonable to compass or imagine the king's death; while no project of rebellion appears to fall within the letter of its enactments unless it ripen into a substantive act of levying war.

We may be, perhaps, less inclined to attribute this material omission to the laxity which has been already remarked to be usual in our older laws, than to apprehensions entertained by the barons that, if a mere design to levy war should be rendered treasonable, they might be exposed to much false testimony and arbitrary construction. But strained constructions of this very statute, if such were their aim, they did not prevent. Without advertising to the more extravagant convictions under this statute in some violent reigns, it gradually became an established doctrine with lawyers that a conspiracy to levy war against the king's person, though not in itself a distinct treason, may be given in evidence as an overt act of compassing his death. Great as the authorities may be on which this depends, and reasonable as it surely is that such offences should be brought within the pale of high treason, yet it is almost necessary to confess that this doctrine appears utterly irreconcilable with any fair interpretation of the statute. It has, indeed, by some been chiefly confined to cases where the attempt meditated is directly against the king's person for the purpose of deposing him, or of compelling him, while under actual duress, to a change of measures; and this was construed into a compassing of his death, since any such violence must endanger his life, and because, as has been said, the prisons and graves of princes are not very distant. But it seems not very reasonable to found a capital conviction on such a sententious remark; nor is it by any means true that a design against a king's life is necessarily to be inferred from the attempt to get possession of his person. So far indeed is this from being a general rule, that in a multitude of instances, especially during the minority or imbecility of a king, the purposes of conspirators would be wholly defeated by the death of the sovereign whose name they designed to employ. But there is still less pretext for applying the same construction to schemes of insurrection when the royal person is not directly the object of attack, and where no circumstance indicates any

hostile intention towards his safety. This ample extension of so penal a statute was first given, if I am not mistaken, by the judges in 1663, on occasion of a meeting by some persons at Farley Wood in Yorkshire, in order to concert measures for a rising. But it was afterwards confirmed in *Harding's case*, immediately after the Revolution, and has been repeatedly laid down from the bench in subsequent proceedings for treason, as well as in treatises of very great authority. It has therefore all the weight of established precedent; yet I question whether another instance can be found in our jurisprudence of giving so large a construction, not only to a penal, but to any other statute. Nor does it speak in favour of this construction, that temporary laws have been enacted on various occasions to render a conspiracy to levy war treasonable; for which purpose, according to this current doctrine, the statute of Edward III. needed no supplemental provision. Such acts were passed under Elizabeth, Charles II., and George III., each of them limited to the existing reign. But it is very seldom that, in an hereditary monarchy, the reigning prince ought to be secured by any peculiar provisions; and though the remarkable circumstances of Elizabeth's situation exposed her government to unusual perils, there seems an air of adulation or absurdity in the two latter instances. Finally, the act of 51 G. III. c. 6, has confirmed, if not extended, what stood on rather a precarious basis, and rendered perpetual that of 35 G. III. c. 7, which enacts, "that if any person or persons whatsoever, during the life of the king, and until the end of the next session of parliament after a demise of the crown, shall, within the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the same our sovereign lord the king, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his majesty's dominions or countries, or to levy war against his majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both houses or either house of parliament, or to move or stir any congregation of strangers with force to invade this realm

or any other his majesty's dominions or countries under the obedience of his majesty, his heirs and successors; and such compassings, imaginations, inventions, devices, and intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being legally convicted thereof upon the oaths of two lawful and credible witnesses, shall be adjudged a traitor, and suffer as in cases of high treason."

This from henceforth will become our standard of law in cases of treason, instead of the statute of Edward III., the latterly received interpretations of which it sanctions and embodies. But it is to be noted, as the doctrine of our most approved authorities, that a conspiracy for many purposes which, if carried into effect, would incur the guilt of treason will not of itself amount to it. The constructive interpretation of compassing the king's death appears only applicable to conspiracies whereof the intent is to depose or to use personal compulsion towards him, or to usurp the administration of his government. But though insurrections in order to throw down all enclosures, to alter the established law or change religion, or in general for the reformation of alleged grievances of a public nature, wherein the insurgents have no special interests, are in themselves treasonable, yet the previous concert and conspiracy for such purpose could, under the statute of Edward III., only pass for a misdemeanor. Hence, while it has been positively laid down that an attempt by intimidation and violence to force the repeal of a law is high treason, though directed rather against the two houses of parliament than the king's person, the judges did not venture to declare that a mere conspiracy and consultation to raise a force for that purpose would amount to that offence. But the statutes of 36 & 57 G. III. determine the intention to levy war, in order to put any force upon or to intimidate either house of parliament, manifested by any overt act, to be treason, and so far have undoubtedly extended the scope of the law. We may hope that so ample a legislative declaration on the law of treason will put an end to the preposterous interpretations which have found too much countenance on some not very distant occasions. The crime of compassing and imagining the king's death must be manifested by some overt act; that is, there must be something done in execution of a traitorous purpose. For, as no hatred towards the person of the

sovereign, nor any longings for his death, are the imagination which the law here intends it seems to follow that loose words or writings, in which such hostile feelings may be embodied, unconnected with any positive design, cannot amount to treason. It is now, therefore, generally agreed that no words will constitute that offence, unless as evidence of some overt act of treason; and the same appears clearly to be the case with respect at least to unpublished writings.

The second clause of the statute, or that which declares the levying of war against the king within the realm to be treason, has given rise, in some instances, to constructions hardly less strained than those upon compassing his death. It would indeed be a very narrow interpretation, as little required by the letter as warranted by the reason of this law, to limit the expression of levying war to rebellions whereof the deposition of the sovereign, or subversion of his government, should be the deliberate object. Force, unlawfully directed against the supreme authority, constitutes this offence; nor could it have been admitted as an excuse for the wild attempt of the earl of Essex, on this charge of levying war, that his aim was not to injure the queen's person, but to drive his adversaries from her presence. The only questions as to this kind of treason are: first, what shall be understood by force? and secondly, where it shall be construed to be directed against the government? And the solution of both these, upon consistent principles, must so much depend on the circumstances which vary the character of almost every case, that it seems natural to distrust the general maxims that have been delivered by lawyers. Many decisions in cases of treason before the Revolution were made by men so servile and corrupt, they violate so grossly all natural right and all reasonable interpretation of law, that it has generally been accounted among the most important benefits of that event to have restored a purer administration of criminal justice. But, though the memory of those who pronounced these decisions is stigmatized, their authority, so far from being abrogated, has influenced later and better men; and it is rather an unfortunate circumstance that precedents which, from the character of the times when they occurred, would lose at present all respect, having been transfused into text-books, and formed perhaps the sole basis of subsequent decisions, are still in not a few points the invisible foundation of our law. Ne

lawyer, I conceive, prosecuting for high treason in this age, would rely on the case of the duke of Norfolk under Elizabeth, or that of Williams under James I., or that of Benstead under Charles I.; but he would certainly not fail to dwell on the authorities of sir Edward Coke and sir Matthew Hale. Yet these eminent men and especially the latter, aware that our law is mainly built on adjudged precedent, and not daring to reject that which they would not have themselves asserted, will be found to have rather timidly exercised their judgment in the construction of this statute, yielding a deference to former authority which we have transferred to their own.

These observations are particularly applicable to that class of cases so repugnant to the general understanding of mankind, and, I believe, of most lawyers, wherein trifling insurrections for the purpose of destroying brothels or meeting-houses have been held treasonable under the clause of levying war. Nor does there seem any ground for the defence which has been made for this construction, by taking a distinction that, although a rising to effect a partial end by force is only a riot, yet, where a general purpose of the kind is in view, it becomes rebellion; and thus, though to pull down the enclosures in a single manor be not treason against the king, yet to destroy all enclosures throughout the kingdom would be an infringement of his sovereign power. For, however solid this distinction may be, yet, in the class of cases to which I allude, this general purpose was neither attempted to be made out in evidence, nor rendered probable by the circumstances; nor was the distinction ever taken upon the several trials. A few apprentices rose in London in the reign of Charles II., and destroyed some brothels. A mob of watermen and others, at the time of Sacheverell's impeachment, set on fire several dissenting meeting-houses. Everything like a formal attack on the established government is so much excluded in these instances by the very nature of the offence and the means of the offenders, that it is impossible to withhold our reprobation from the original decision, upon which, with too much respect for unreasonable and unjust authority, the later cases have been established. These, indeed, still continue to be cited as law; but it is much to be doubted whether a conviction for treason will ever again be obtained, or even sought for, under similar circumstances. One

reason indeed for this, were there no weight in any other, might suffice: the punishment of tumultuous risings, attended with violence, has been rendered capital by the riot act of George I. and other statutes; so that, in the present state of the law, it is generally more advantageous for the government to treat such an offence as felony than as treason.

It might for a moment be doubted, upon the statute of Edward VI., whether the two witnesses whom the act requires must not depose to the same overt acts of treason. But, as this would give an undue security to conspirators, so it is not necessarily implied by the expression; nor would it be indeed the most unwarrantable latitude that has been given to this branch of penal law to maintain that two witnesses to any distinct acts comprised in the same indictment would satisfy the letter of this enactment. But a more wholesome distinction appears to have been taken before the Revolution, and is established by the statute of William, that, although different overt acts may be proved by two witnesses, they must relate to the same species of treason, so that one witness to an alleged act of compassing the king's death cannot be conjoined with another deposing to an act of levying war, in order to make up the required number. As for the practice of courts of justice before the Restoration, it was so much at variance with all principles, that few prisoners were allowed the benefit of this statute; succeeding judges fortunately deviated more from their predecessors in the method of conducting trials than they have thought themselves at liberty to do in laying down rules of law.

Nothing had brought so much disgrace on the councils of government and on the administration of justice, nothing had more forcibly spoken the necessity of a great change, than the precautions for treason during the latter years of Charles II., and in truth during the whole course of our legal history. The statutes of Edward III. and Edward VI., almost set aside by sophistical constructions, required the corroboration of some more explicit law; and some peculiar securities were demanded for innocence against the conspiracy of the court with the prosecutor which is so much to be dreaded in all trials for political crimes. Hence the attacks of Russell, Sidney, Cornish, and Armstrong were reversed by the convention parliament without opposition; and men attached to liberty and justice, who were at

the whig or tory name, were anxious to prevent any future recurrence of those iniquitous proceedings, by which the popular frenzy at one time, the wickedness of the court at another, and in each instance with the co-operation of a servile bench of judges, had sullied the honour of English justice. A better tone of political sentiment had begun indeed to prevail, and the spirit of the people must ever be a more effectual security than the virtue of the judges; yet, even after the Revolution, if no unjust or illegal convictions in cases of treason can be imputed to our tribunals, there was still not a little of that rudeness towards the prisoner, and manifestation of a desire to interpret all things to his prejudice, which had been more grossly displayed by the bench under Charles II. The Jacobites, against whom the Law now directed its terrors, as loudly complained of Treby and Pollexfen, as the whigs had of Scroggs and Jeffries, and weighed the convictions of Ashton and Anderton against those of Russell and Sidney.

Ashton was a gentleman who, in company with lord Preston, was seized in endeavouring to go over to France with an invitation from the Jacobite party. The contemporary writers on that side, and some historians who incline to it, have represented his conviction as grounded upon insufficient, because only upon presumptive, evidence. It is true that, in most of our earlier cases of treason, treasonable facts have been directly proved; whereas it was left to the jury in that of Ashton, whether they were satisfied of his acquaintance with the contents of certain papers taken on his person. There does not, however, seem to be any reason why presumptive inferences are to be rejected in charges of treason, or why they should be drawn with more hesitation than in other grave offences; and if this be admitted, there can be no doubt that the evidence against Ashton was such as is ordinarily reckoned conclusive. It is stronger than that offered for the prosecution against O'Quigley at Maidstone, in 1798, a case of the closest resemblance; and yet I am not aware that the verdict in that instance was thought open to

censure. No judge, however, in modern times, would question, much less reply to, the prisoner as to material points of his defence, as Holt and Pollexfen did in this trial; the practice of a neighbouring kingdom, which, in our more advanced sense of equity and candour, we are agreed to condemn.

It is perhaps less easy to justify the conduct of chief justice Treby in the trial of Anderton for printing a treasonable pamphlet. The testimony came very short of satisfactory proof, according to the established rules of English Law, though by no means such as men in general would slight. It chiefly consisted of a comparison between the characters of a printed work found concealed in his lodgings and certain types belonging to his press: a comparison manifestly less admissible than that of handwriting, which is always rejected, and indeed totally inconsistent with the rigour of English proof. Besides the common objections made to a comparison of hands, and which apply more forcibly to printed characters, it is manifest that types cast in the same font must always be exactly similar. But, on the other hand, it seems unreasonable absolutely to exclude, as our courts have done, the comparison of handwriting as inadmissible evidence: a rule which is every day eluded by fresh rules, not much more rational in themselves, which have been invented to get rid of its inconvenience.¹ There seems, however, much danger in the construction which draws printed libels, unconnected with any conspiracy, within the pale of treason, and especially the treason of compassing the king's death, unless where they directly tended to his assassination. No later authority can as far as I remember, be adduced for the prosecution of any libel as treasonable under the statute of Edward III. But the pamphlet for which Anderton was convicted was certainly full of the most audacious Jacobitism, and might perhaps fall, by no unfair construction, within the charge of adhering to the king's enemies, since no one could be more so than James, whose design of invading the realm had been frequently avowed by himself.

¹ Comparison of handwriting is now admitted by the Courts of Law

CHAPTER XVI.

ON THE STATE OF THE CONSTITUTION IN THE
REIGNS OF ANNE, GEORGE I., AND GEORGE II.

- § 1. Termination of Contest between the Crown and Parliament. § 2. Distinctive Principles of Whigs and Tories. § 3. Changes effected in these by Circumstances. § 4. Impeachment of Sacheverell displays them again. § 5. Revolutions in the Ministry under Anne. § 6. War of the Succession. § 7. Treaty of Peace broken off. Renewed again by the Tory Government. § 8. Arguments for and against the Treaty of Utrecht. § 9. The Negotiation mismanaged. § 10. Intrigues of the Jacobites. § 11. Some of the Ministers engage in them. § 12. Just Alarm for the Hanover Succession. § 13. Accession of George I. Whigs come into Power. § 14. Great Disaffection in the Kingdom. § 15. Impeachment of Tory Ministers. § 16. Bill for Septennial Parliaments. § 17. Peerage Bill. § 18. Jacobitism among the Clergy. § 19. Convocation. § 20. Its Encroachments. § 21. Hoadley. Convocation no longer suffered to sit. § 22. Infringements of the Toleration by Statutes under Anne. § 23. They are repealed by the Whigs. § 24. Principles of Toleration fully established. § 25. Banishment of Atterbury. § 26. Decline of the Jacobites. § 27. Prejudices against the Reigning Family. Jealousy of the Crown. § 28. Changes in the Constitution whereon it was founded. Permanent Military Force. Apprehensions from it. Establishment of Militia. § 29. Influence over Parliament by Places and Pensions. Attempts to restrain it. Place Bill of 1743. Secret Corruption. § 30. Commitments for Breach of Privilege. § 31. Extension of Penal Laws. § 32. Diminution of Personal Authority of the Crown. Causes of this. § 33. Party Connexions. § 34. Influence of Political Writings. § 35. Publication of Debates. § 36. Increased Influence of the Middle Ranks.

§ 1. THE Act of settlement was the seal of our constitutional laws, the complement of the Revolution itself and the bill of rights, the last great statute which restrains the power of the crown, and manifests, in any conspicuous degree, a jealousy of parliament in behalf of its own and the subject's privileges. The battle had been fought and gained; the statute-book, as it becomes more voluminous, is less interesting in the history of our constitution; the voice of petition, complaint, or remonstrance is seldom to be traced in the Journals; the crown in return desists altogether, not merely from the threatening or oburgatory tone of the Stuarts, but from that dissatisfaction sometimes apparent in the language of William; and the vessel seems riding in smooth water, moved by other impulses, and liable perhaps to other dangers, than those of the ocean-wave and the tempest. The reigns, accordingly, of Anne, George I., and George II., afford rather materials for dissertation, than consecutive facts for such a work as the present; and may be sketched in a single chapter, though by no means the least important, which the reader's study and reflection must enable him to fill up. Changes

of an essential nature were in operation during the sixty years of these three reigns, as well as in that beyond the limits of this undertaking, which in length measures them all; some of them greatly enhancing the authority of the crown, or rather of the executive government, while others had so opposite a tendency, that philosophical speculators have not been uniform in determining on which side was the sway of the balance.

§ 2. No clear understanding can be acquired of the political history of England without distinguishing, with some accuracy of definition, the two great parties of whig and tory. But this is not easy; because those denominations, being sometimes applied to factions in the state intent on their own aggrandizement, sometimes to the principles they entertained or professed, have become equivocal, and do by no means, at all periods and on all occasions, present the same sense; an ambiguity which has been increased by the lax and incorrect use of familiar language. We may consider the words, in the first instance, as expressive of a political theory or principle, applicable to the English government. They were originally employed at the time of the bill of exclusion, though the distinction of the parties they denote is evidently at least as old as the long parliament. Both of these parties, it is material to observe, agreed in the maintenance of the constitution; that is, in the administration of government by an hereditary sovereign, and in the concurrence of that sovereign with the two houses of parliament in legislation, as well as in those other institutions which have been reckoned most ancient and fundamental. A favourer of unlimited monarchy was not a tory, neither was a republican a whig. Lord Clarendon was a tory, Hobbes was not; bishop Hoadley was a whig, Milton was not. But they differed mainly in this; that to a tory the constitution, inasmuch as it was the constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. Within those bounds which he, as well as his antagonist, meant not to transgress, and rejecting all unnecessary innovation, the whig had a natural tendency to political improvement, the tory an aversion to it. The one loved to descant on liberty and the rights of mankind, the other on the mischiefs of sedition and the rights of kings. Though both, as I have said, admitted a common principle, the maintenance of the constitution, yet this made the privileges of the subject, that the crown's prerogative, his peculiar care. Hence it seemed likely that, through passion and circumstance, the tory might aid in establishing despotism, or the whig in subverting monarchy. The former was

the prerogative was repugnant to the maxims of his creed, and placed him, as I have said, in a false position. This is of course applicable to the reigns of George I. and II., and in a greater degree in proportion as the tory and jacobite were more separated than they had been perhaps under William.

The tories gave a striking proof how far they might be brought to abandon their theories, in supporting an address to the queen that she would invite the princess Sophia to take up her residence in England; a measure so unnatural as well as imprudent, that some have ascribed it to a subtlety of politics which I do not comprehend. But we need not, perhaps, look farther than to the blind rage of a party just discarded, who, out of pique towards their sovereign, made her more irreconcilably their enemy, and, while they hoped to brand their opponents with inconsistency, forgot that the imputation would redound with tenfold force on themselves. The whigs justly resisted a proposal so little called for at that time; but it led to an act for the security of the succession, designating a regency in the event of the queen's decease, and providing that the actual parliament, or the last if none were in being, should meet immediately, and continue for six months, unless dissolved by the successor.

In the conduct of this party, generally speaking, we do not, I think, find any abandonment of the cause of liberty. The whigs appear to have been zealous for bills excluding placemen from the house, or limiting their numbers in it; and the abolition of the Scots privy council, an odious and despotic tribunal, was owing in a great measure to the authority of lord Somers. In these measures however the tories generally co-operated; and it is certainly difficult in the history of any nation to separate the influence of sincere patriotism from that of animosity and thirst of power. But one memorable event in the reign of Anne gave an opportunity for bringing the two theories of government into collision, to the signal advantage of that which the whigs professed; I mean the impeachment of Dr. Sacheverell. Though, with a view to the interests of their ministry, this prosecution was very unadvised, and has been deservedly censured, it was of high importance in a constitutional light, and is not only the most authentic exposition, but the most authoritative ratification, of the principles upon which the Revolution is to be defended.

§ 4. The charge against Sacheverell was not for impugning what was done at the Revolution, which he affected to vindicate, but for maintaining that it was not a case of resistance to the supreme power, and consequently no exception to his tenet of an unlimited passive obedience. The managers of the impeachment had, therefore, not only to prove that there was resistance in the Revolution,

which could not of course be sincerely disputed, but to assert the lawfulness, in great emergencies, or, what is called in politics, necessity, of taking arms against the law—a delicate matter to treat of at any time, and not least so by ministers of state and law officers of the crown, in the very presence, as they know, of their sovereign. We cannot praise too highly their speeches upon this charge: some shades, rather of discretion than discordance, may be perceptible; and we may distinguish the warmth of Lechmere, or the openness of Stanhope, from the caution of Walpole, who betrays more anxiety than his colleagues to give no offence in the highest quarter; but in every one the same fundamental principles of the whig creed, except on which indeed the impeachment could not rest, are unambiguously proclaimed:—

“Since we must give up our right to the laws and liberties of this kingdom,” says Sir Joseph Jekyll, “or, which is all one, be precarious in the enjoyment of them, and hold them only during pleasure, if this doctrine of unlimited non-resistance prevails, the commons have been content to undertake this prosecution.”—“The doctrine of unlimited, unconditional passivo obedience,” says Mr. Walpole, “was first invented to support arbitrary and despotic power, and was never promoted or countenanced by any government that had not designs some time or other of making use of it.” And thus General Stanhope still more vigorously: “As to the doctrine itself of absolute non-resistance, it should seem needless to prove by arguments that it is inconsistent with the law of reason, with the law of nature, and with the practice of all ages and countries. Nor is it very material what the opinions of some particular divines, or even the doctrine generally preached in some particular reigns, may have been concerning it. It is sufficient for us to know what the practice of the church of England has been, when it found itself oppressed. And indeed one may appeal to the practice of all churches, of all states, and of all nations in the world, how they behaved themselves when they found their civil and religious constitutions invaded and oppressed by tyranny. I believe we may further venture to say that there is not at this day subsisting any nation or government in the world, whose first original did not receive its foundation either from resistance or compact; and, as to our purpose, it is equal if the latter be admitted. For wherever compact is admitted, there must be admitted likewise a right to defend the rights accruing by such compact. To argue the municipal laws of a country in this case is idle. Those laws were only made for the common course of things, and can never be understood to have been designed to defeat the end of all laws whatsoever; which would be the consequence of a nation’s tamely submitting to a violation of all their divine and human rights.” Mr. Lechmere argues to the same purpose in yet stronger terms.

But, if these managers for the commons were explicit in their assertion of the whig principle, the counsel for Sacheverell by no means unfurled the opposite banner with equal courage. In this was chiefly manifested the success of the former. His advocates had recourse to the petty chicane of arguing that he had laid down

a general rule of obedience without mentioning its exceptions, that the Revolution was a case of necessity, and that they fully approved what was done therein. They set up a distinction, which, though at that time perhaps novel, has sometimes since been adopted by tory writers; that resistance to the supreme power was indeed utterly illegal on any pretence whatever, but that the supreme power in this kingdom was the legislature, not the king; and that the Revolution took effect by the concurrence of the lords and commons. This is of itself a descent from the high ground of toryism, and would not have been held by the sincere bigots of that creed. Though specious, however, the argument is a sophism, and does not meet the case of the Revolution. For, though the supreme power may be said to reside in the legislature, yet the prerogative within its due limits is just as much part of the constitution, and the question of resistance to lawful authority remains as before. Even if this resistance had been made by the two houses of parliament, it was but the case of the civil war which had been explicitly condemned by more than one statute of Charles II. But, as Mr. Lechmere said in reply, it was undeniable that the lords and commons did not join in that resistance at the revolution as part of the legislative and supreme power, but as part of the collective body of the nation. And sir John Holland had before observed, "that there was a resistance at the revolution was most plain, if taking up arms in Yorkshire, Nottinghamshire, Cheshire, and almost all the counties of England; if the desertion of a prince's own troops to an invading prince, and turning their arms against their sovereign, be resistance." It might in fact have been asked whether the dukes of Leeds and Shrewsbury, then sitting in judgment on Sacheverell (and who afterwards voted him not guilty), might not have been convicted of treason, if the prince of Orange had failed of success? The advocates indeed of the prisoner made so many concessions as amounted to an abandonment of all the general question. They relied chiefly on numerous passages in the homilies and most approved writers of the Anglican church, asserting the duty of unbounded passive obedience. But the managers eluded these in their reply with decent respect. The lords voted Sacheverell guilty by a majority of 67 to 59; several voting on each side rather according to their present faction than their own principles. They passed a slight sentence, interdicting him only from preaching for three years. This was deemed a sort of triumph by his adherents; but a severe punishment on one so insignificant would have been misplaced; and the sentence may be compared to the nominal damages sometimes given in a suit instituted for the trial of a great right.

§ 5. The shifting combinations of party in the reign of Anne, which affected the original distinctions of whig and tory, though

generally known, must be shortly noticed. The queen, whose understanding and fitness for government were below mediocrity, had been attached to the tories, and bore an antipathy to her predecessor. Her first ministry, her first parliament, gave presage of a government to be wholly conducted by that party. But this prejudice was counteracted by the persuasions of that celebrated favourite, the wife of Marlborough, who, probably from some personal resentments, had thrown her influence into the scale of the whigs. The well-known records of their conversation and correspondence present a strange picture of good-natured feebleness on one side, and of ungrateful insolence on the other. But the interior of a court will rarely endure daylight. Though Godolphin and Marlborough, in whom the queen reposed her entire confidence, had been thought tories, they became gradually alienated from that party, and communicated their own feelings to the queen. The house of commons very reasonably declined to make an hereditary grant to the latter out of the revenues of the post-office in 1702, when he had performed no extraordinary services; though they acceded to it without hesitation after the battle of Blenheim. This gave some offence to Anne; and the chief tory leaders in the cabinet, Rochester, Nottingham, and Buckingham, displaying a reluctance to carry on the war with such vigour as Marlborough knew to be necessary, were soon removed from office. Their revengeful attack on the queen, in the address to invite the princess Sophia, made a return to power hopeless for several years. Anne, however, entertained a desire very natural to an English sovereign, yet in which none but a weak one will expect to succeed, of excluding chiefs of parties from her councils. Disgusted with the tories, she was loth to admit the whigs; and thus Godolphin's administration, from 1704 to 1708, was rather sullenly supported, sometimes indeed thwarted, by that party. Cowper was made chancellor against the queen's wishes; but the junto, as it was called, of five eminent whig peers, Somers, Halifax, Wharton, Orford, and Sunderland, were kept out through the queen's dislike, and in some measure, no question, through Godolphin's jealousy. They forced themselves into the cabinet about 1708; and effected the dismissal of Harley and St. John, who, though not of the regular tory school in connexion or principle, had already gone along with that faction in the late reign, and were now reduced by their dismissal to unite with it. The whig ministry of queen Anne, so often talked of, cannot in fact be said to have existed more than two years, from 1708 to 1710; her previous administration having been at first tory, and afterwards of a motley complexion, though depending for existence on the great whig interest which it in some degree proscribed. Every one knows that this ministry was precipitated from power through the favourite's

abuse of her ascendancy, become at length intolerable to the most forbearing of queens and mistresses, conspiring with another intrigue of the bedchamber, and the popular clamour against Sacheverell's impeachment. It seems rather a humiliating proof of the sway which the feeblest prince enjoys even in a limited monarchy, that the fortunes of Europe should have been changed by nothing more noble than the insolence of one waiting-woman and the cunning of another. It is true that this was effected by throwing the weight of the crown into the scale of a powerful faction; yet the house of Bourbon would probably not have reigned beyond the Pyrennees, but for Sarah and Abigail at queen Anne's toilet.

§ 6. The object of the war, as it is commonly called, of the Grand Alliance, commenced in 1702, was, as expressed in an address of the house of commons, for preserving the liberties of Europe and reducing the exorbitant power of France. The occupation of the Spanish dominions by the duke of Anjou, on the authority of the late king's will, was assigned as its justification, together with the acknowledgment of the pretended prince of Wales as successor to his father James. Charles, archduke of Austria, was recognised as king of Spain; and as early as 1705 the restoration of that monarchy to his house is declared in a speech from the throne to be not only safe and advantageous, but glorious to England. Louis XIV. had perhaps at no time much hope of retaining for his grandson the whole inheritance he claimed; and on several occasions made overtures for negotiation, but such as indicated his design of rather sacrificing the detached possessions of Italy and the Netherlands than Spain itself and the Indies. After the battle of Oudenarde, however, and the loss of Lille in the campaign of 1708, the exhausted state of France and discouragement of his court induced him to acquiesce in the cession of the Spanish monarchy as a basis of treaty. In the conferences of the Hague, in 1709, he struggled for a time to preserve Naples and Sicily; but ultimately admitted the terms imposed by the allies, with the exception of the famous thirty-seventh article of the preliminaries, binding him to procure by force or persuasion the resignation of the Spanish crown by his grandson within two months. This proposition he declared to be both dishonourable and impracticable; and, the allies refusing to give way, the negotiation was broken off. It was renewed the next year at Gertruydenburg; but the same obstacle still proved insurmountable.

It has been the prevailing opinion in modern times that the English ministry, rather against the judgment of their allies of Holland, insisted upon a condition not indispensable to their security, and too ignominious for their fallen enemy to accept. Some may perhaps incline to think that, even had Philip of Anjou been

triple in amount of those paid before the Revolution. Yet amidst these sacrifices we had the mortification of finding a debt rapidly increasing, whereof the mere interest far exceeded the ancient revenues of the crown, to be bequeathed, like an hereditary curse, to unborn ages.¹ Though the supplies had been raised with less difficulty than in the late reign, and the condition of trade was less unsatisfactory, the landed proprietors saw with indignation the silent transfer of their wealth to new men, and almost hated the glory that was brought by their own degradation. Was it not to be feared that they might hate also the Revolution, and the protestant succession that depended on it, when they tasted these fruits it had borne? Even the army had been recruited by violent means unknown to our constitution, yet such as the continual loss of men, with a population at the best stationary, had perhaps rendered necessary.²

2. The prospect of reducing Spain to the archduke's obedience was grown unfavourable. It was at best an odious work, and not very defensible on any maxims of national justice, to impose a sovereign on a great people in despite of their own repugnance, and what they deemed their royal obligation. Heaven itself might shield their righteous cause, and baffle the selfish rapacity of human politics. But what was the state of the war at the close of 1710? The surrender of 7000 English under Stanhope at Brihuega had ruined the affairs of Charles, which in fact had at no time been truly prosperous, and confined him to the single province sincerely attached to him, Catalonia. As it was certain that Philip had spirit enough to continue the war, even if abandoned by his grandfather, and would have the support of almost the entire nation, what remained but to carry on a very doubtful contest for the subjugation of that extensive kingdom? In Flanders, no doubt, the genius of Marlborough kept still the ascendant; yet France had her Fabius in Villars; and the capture of three or four small fortresses in a whole campaign did not presage a rapid destruction of the enemy's power.

3. It was acknowledged that the near connexion of the monarchs on the thrones of France and Spain could not be desired for Europe. Yet the experience of ages had shown how little such ties of blood

¹ The national debt, 31st Dec. 1714, amounted, according to Chalmers, to 50,514,306*l*. Sinclair makes it 52,115,363*l*. But about half of this was temporary annuities. The whole expenses of the war are reckoned by the former writer at 65,933,799*l*. The interest of the debt was, as computed by Chalmers, 2,511,903*l*.; by Sinclair, 3,351,358*l*.

² A bill was passed for raising a sufficient number of troops out of such per-

sons as have no lawful calling or employment. Stat. 4 Anne, c. 10; *Parl. Hist.* 335. The parish collectors were thus enabled to press men for the land service; a method hardly less unconstitutional than the former, and liable to enormous abuses. The act was temporary, but renewed several times during the war. It was afterwards revived in 1721 (10 Geo. II. c. 2), but never, I believe, on any later occasion.

much enfeebled; the supplies were still raised without difficulty commerce had not declined; public credit stood high under the Godolphin ministry; and it was especially remarkable that the change of administration, notwithstanding the prospect of peace, was attended by a great fall in the price of stocks. France on the other hand, was notoriously reduced to the utmost distress; and, though it were absurd to allege the misfortunes of our enemy by way of consolation for our own, yet the more exhausted of the two combatants was naturally that which ought to yield; and it was not for the honour of our free government that we should be outdone in magnanimous endurance of privations for the sake of the great interests of ourselves and our posterity by the despotism we so boastfully scorned. The king of France had now for half a century been pursuing a system of encroachment on the neighbouring states, which the weakness of the two branches of the Austrian house, and the perfidiousness of the Stuarts, not less than the valour of his troops and skill of his generals, had long rendered successful. The tide had turned for the first time in the present war; victories more splendid than were recorded in modern warfare had illustrated the English name. Were we spontaneously to relinquish these great advantages, and, two years after Louis had himself consented to withdraw his forces from Spain, our own arms having been in the mean time still successful on the most important scene of the contest, to throw up the game in despair, and leave him far more the gainer at the termination of this calamitous war than he had been after those triumphant campaigns which his vaunting medals commemorate? Spain of herself could not resist the confederates, even if united in support of Philip; which was denied as to the provinces composing the kingdom of Aragon, and certainly as to Catalonia: it was in Flanders that Castile was to be conquered; it was France that we were to overcome; and now that her iron barrier had been broken through, when Marlborough was preparing to pour his troops upon the defenceless plains of Picardy, could we doubt that Louis must in good earnest abandon the cause of his grandson, as he had already pledged himself in the conferences of Gertruydenburg?

2. It was easy to slight the influence which the ties of blood exert over kings. Doubtless they are often torn asunder by ambition or wounded pride. But it does not follow that they have no efficacy; and the practice of courts in cementing alliances by intermarriage seems to show that they are not reckoned indifferent. It might however be admitted that a king of Spain, such as she had been a hundred years before, would probably be led by the tendency of his ambition into a course of policy hostile to France. But that monarchy had long been declining: great rather in name and extent

of dominion than intrinsic resources, she might perhaps rally for a short period under an enterprising minister; but with such inveterate abuses of government, and so little progressive energy among the people, she must gradually sink lower in the scale of Europe, till it might become the chief pride of her sovereigns that they were the younger branches of the house of Bourbon. To cherish this connexion would be the policy of the court of Versailles; there would result from it a dependent relation, an habitual subserviency of the weaker power, a family compact of perpetual union, always opposed to Great Britain. In distant ages, and after fresh combinations of the European commonwealth should have seemed almost to efface the recollection of Louis XIV. and the war of the succession, the Bourbons on the French throne might still claim a sort of primogenitary right to protect the dignity of the junior branch by interference with the affairs of Spain; and a late posterity of those who witnessed the peace of Utrecht might be entangled by its improvident concessions.

3. That the accession of Charles to the empire rendered his possession of the Spanish monarchy in some degree less desirable, need not be disputed; though it would not be easy to prove that it could endanger England, or even the smaller states, since it was agreed on all hands that he was to be master of Milan and Naples. But against this, perhaps imaginary mischief, the opponents of the treaty set the risk of seeing the crowns of France and Spain united on the head of Philip. In the year 1711 and 1712 the dauphin, the duke of Burgundy, and the duke of Berry were swept away. An infant stood alone between the king of Spain and the French succession. The king was induced, with some unwillingness, to sign a renunciation of this contingent inheritance. But it was notoriously the doctrine of the French court that such renunciations were invalid; and the sufferings of Europe were chiefly due to this tenet of indefeasible royalty. It was very possible that Spain would never consent to this union, and that a fresh league of the great powers might be formed to prevent it; but, if we had the means of permanently separating the two kingdoms in our hands, it was strange policy to leave open this door for a renewal of the quarrel.

§ 9. But whatever judgment we may be disposed to form as to the political necessity of leaving Spain and America in the possession of Philip, it is impossible to justify the course of that negotiation which ended in the peace of Utrecht. It was at best a dangerous and inauspicious concession, demanding every compensation that could be devised, and which the circumstances of the war entitled us to require. France was still our formidable enemy; the ambition of Louis was still to be dreaded, his intrigues to be suspected. That an English minister should have thrown himself into the

much enfeebled; the supplies were still raised without difficulty commerce had not declined; public credit stood high under the Godolphin ministry; and it was especially remarkable that the change of administration, notwithstanding the prospect of peace, was attended by a great fall in the price of stocks. France on the other hand, was notoriously reduced to the utmost distress; and, though it were absurd to allege the misfortunes of our enemy by way of consolation for our own, yet the more exhausted of the two combatants was naturally that which ought to yield; and it was not for the honour of our free government that we should be outdone in magnanimous endurance of privations for the sake of the great interests of ourselves and our posterity by the despotism we so boastfully scorned. The king of France had now for half a century been pursuing a system of encroachment on the neighbouring states, which the weakness of the two branches of the Austrian house, and the perfidiousness of the Stuarts, not less than the valour of his troops and skill of his generals, had long rendered successful. The tide had turned for the first time in the present war; victories more splendid than were recorded in modern warfare had illustrated the English name. Were we spontaneously to relinquish these great advantages, and, two years after Louis had himself consented to withdraw his forces from Spain, our own arms having been in the mean time still successful on the most important scene of the contest, to throw up the game in despair, and leave him far more the gainer at the termination of this calamitous war than he had been after those triumphant campaigns which his vaunting medals commemorate? Spain of herself could not resist the confederates, even if united in support of Philip; which was denied as to the provinces composing the kingdom of Aragon, and certainly as to Catalonia: it was in Flanders that Castile was to be conquered; it was France that we were to overcome; and now that her iron barrier had been broken through, when Marlborough was preparing to pour his troops upon the defenceless plains of Picardy, could we doubt that Louis must in good earnest abandon the cause of his grandson, as he had already pledged himself in the conferences of Gertruydenburg?

2. It was easy to slight the influence which the ties of blood exert over kings. Doubtless they are often torn asunder by ambition or wounded pride. But it does not follow that they have no efficacy; and the practice of courts in cementing alliances by intermarriage seems to show that they are not reckoned indifferent. It might however be admitted that a king of Spain, such as she had been a hundred years before, would probably be led by the tendency of his ambition into a course of policy hostile to France. But that monarchy had long been declining: great rather in name and extent

of dominion than intrinsic resources, she might perhaps rally for a short period under an enterprising minister; but with such inveterate abuses of government, and so little progressive energy among the people, she must gradually sink lower in the scale of Europe, till it might become the chief pride of her sovereigns that they were the younger branches of the house of Bourbon. To cherish this connexion would be the policy of the court of Versailles; there would result from it a dependent relation, an habitual subserviency of the weaker power, a family compact of perpetual union, always opposed to Great Britain. In distant ages, and after fresh combinations of the European commonwealth should have seemed almost to efface the recollection of Louis XIV. and the war of the succession, the Bourbons on the French throne might still claim a sort of primogenitary right to protect the dignity of the junior branch by interference with the affairs of Spain; and a late posterity of those who witnessed the peace of Utrecht might be entangled by its improvident concessions.

3. That the accession of Charles to the empire rendered his possession of the Spanish monarchy in some degree less desirable, need not be disputed; though it would not be easy to prove that it could endanger England, or even the smaller states, since it was agreed on all hands that he was to be master of Milan and Naples. But against this, perhaps imaginary mischief, the opponents of the treaty set the risk of seeing the crowns of France and Spain united on the head of Philip. In the year 1711 and 1712 the dauphin, the duke of Burgundy, and the duke of Berry were swept away. An infant stood alone between the king of Spain and the French succession. The king was induced, with some unwillingness, to sign a renunciation of this contingent inheritance. But it was notoriously the doctrine of the French court that such renunciations were invalid; and the sufferings of Europe were chiefly due to this tenet of indefeasible royalty. It was very possible that Spain would never consent to this union, and that a fresh league of the great powers might be formed to prevent it; but, if we had the means of permanently separating the two kingdoms in our hands, it was strange policy to leave open this door for a renewal of the quarrel.

§ 9. But whatever judgment we may be disposed to form as to the political necessity of leaving Spain and America in the possession of Philip, it is impossible to justify the course of that negotiation which ended in the peace of Utrecht. It was at best a dangerous and inauspicious concession, demanding every compensation that could be devised, and which the circumstances of the war entitled us to require. France was still our formidable enemy; the ambition of Louis was still to be dreaded, his intrigues to be suspected. That an English minister should have thrown himself into the

arms of this enemy at the first overture of negotiation; that he should have renounced advantages upon which he might have insisted; that he should have restored Lille, and almost attempted to procure the sacrifice of Tournay; that throughout the whole correspondence and in all personal interviews with Torcy he should have shown the triumphant queen of Great Britain more eager for peace than her vanquished adversary; that the two courts should have been virtually conspiring against those allies, without whom we had bound ourselves to enter on no treaty; that we should have withdrawn our troops in the midst of a campaign, and even seized upon the towns of our confederates while we left them exposed to be overcome by a superior force; that we should have first deceived those confederates by the most direct falsehood in denying our clandestine treaty, and then dictated to them its acceptance, are facts so disgraceful to Bolingbroke, and in somewhat a less degree to Oxford, that they can hardly be palliated by establishing the expediency of the treaty itself.

§ 10. For several years after the treaty of Ryswick the intrigues of ambitious and discontented statesmen, and of a misled faction, in favour of the exiled family, grew much colder; the old age of James and the infancy of his son being alike incompatible with their success. The jacobites yielded a sort of provisional allegiance to the daughter of their king, deeming her, as it were, a regent in the heir's minority, and willing to defer the consideration of his claim till he should be competent to make it, or to acquiesce in her continuance upon the throne, if she could be induced to secure his reversion. Meanwhile, under the name of torics and high-churchmen, they carried on a more dangerous war by sapping the bulwarks of the revolution-settlement. The disaffected clergy poured forth sermons and libels, to impugn the principles of the whigs or traduce their characters. Twice a year especially, on the 30th of January and 29th of May, they took care that every stroke upon rebellion and usurpation should tell against the expulsion of the Stuarts and the Hanover succession. They inveighed against the dissenters and the toleration. They set up pretences of loyalty towards the queen, descanting sometimes on her hereditary right, in order to throw a slur on the settlement. They drew a transparent veil over their designs, which might screen them from prosecution, but could not impose, nor was meant to impose, on the reader. Among these the most distinguished was Leslie, author of a periodical sheet called the *Rehearsal*, printed weekly from 1701 to 1708; and as he, though a nonjuror and unquestionable jacobite, held only the same language as Sacheverell, and others who affected obedience to the government, we cannot much be deceived in assuming that their views were entirely the same.

§ 11. The court of St. Germain's, in the first years of the queen, preserved a secret connexion with Godolphin and Marlborough, though justly distrustful of their sincerity; nor is it by any means clear that they made any strong professions. Their evident determination to reduce the power of France, their approximation towards the whigs, the averseness of the duchess to jacobite principles, taught at length that unfortunate court how little it had to expect from such ancient friends. The Scotch jacobites, on the other hand, were eager for the young king's immediate restoration; and their assurances finally produced his unsuccessful expedition to the coast in 1708. This alarmed the queen, who at least had no thoughts of giving up any part of her dominions, and probably exasperated the two ministers. Though Godolphin's partiality to the Stuart cause was always suspected, the proofs of his intercourse with their emissaries are not so strong as against Marlborough; who, so late as 1711, declared himself more positively than he seems hitherto to have done in favour of their restoration. But the extreme selfishness and treachery of his character make it difficult to believe that he had any further view than to secure himself in the event of a revolution which he judged probable. His interest, which was always his deity, did not lie in that direction; and his great sagacity must have perceived it.

§ 12. A more promising overture had by this time been made to the young claimant from an opposite quarter. Mr. Harley, about the end of 1710, sent the abbé Gaultier to marshal Berwick (natural son of James II. by Marlborough's sister), with authority to treat about the restoration; Anne of course retaining the crown for her life, and securities being given for the national religion and liberties. The conclusion of peace was a necessary condition. The jacobites in the English parliament were directed in consequence to fall in with the court, which rendered it decidedly superior. Harley promised to send over in the next year a plan for carrying that design into effect. But neither at that time, nor during the remainder of the queen's life, did this dissembling minister take any further measures, though still in strict connexion with that party at home, and with the court of St. Germain's. It was necessary, he said, to proceed gently, to make the army their own, and to avoid suspicions which would be fatal. It was manifest that the course of his administration was wholly inconsistent with his professions; the friends of the house of Stuart felt that he betrayed, though he did not delude them; but it was the misfortune of this minister, or rather the just and natural reward of crooked counsels, that those he meant to serve could neither believe in his friendship, nor forgive his appearances of enmity. It is doubtless not easy to pronounce on the real intentions of men so destitute of sincerity as

council and in parliament, especially if the son of James, listening to the remonstrances of his English adherents, could have been induced to renounce a faith which, in the eyes of too many, was the sole pretext for his exclusion, and was at least almost the only one which could have been publicly maintained with much success consistently with the general principles of our constitution.

§ 13. The queen's death, which came at last perhaps rather more quickly than was anticipated, broke for ever the fair prospects of her family. George I., unknown and absent, was proclaimed without a single murmur, as if the crown had passed in the most regular descent. But this was a momentary calm. The jacobite party, recovering from the first consternation, availed itself of its usual arms, and of those with which the new king supplied it. Many of the tories who would have acquiesced in the act of settlement seem to have looked on a leading share in the administration as belonging of right to what was called the church party, and complained of the formation of a ministry on the whig principle. In later times also it has been not uncommon to censure George I. for governing, as it is called, by a faction. Nothing can be more unreasonable than this reproach. Was he to select those as his advisers who had been, as we know and as he believed, in a conspiracy with his competitor? Was lord Oxford, even if the king thought him faithful, capable of uniting with any public men, hated as he was on each side? Were not the tories as truly a faction as their adversaries, and as intolerant during their own power? Was there not, above all, a danger that, if some of one denomination were drawn by pique and disappointment into the ranks of the jacobites, the whigs, on the other hand, so ungratefully and perfidiously recompensed for their arduous services to the house of Hanover, might think all royalty irreconcilable with the principles of freedom, and raise up a republican party of which the scattered elements were sufficiently discernible in the nation?³ The exclusion indeed of the whigs would have been so monstrous, both in honour and policy, that the censure has generally fallen on their alleged monopoly of public offices. But the mischiefs of a disunited, hybrid ministry had been sufficiently manifest in the two last reigns; nor could George, a stranger to his people and their constitution, have undertaken without ruin that most difficult task of balancing parties and persons, to which the great mind of William had proved unequal. Nor is it true that the tories as such were proscribed; those who chose to serve the court met with court favour: and in the very outset the few men of sufficient eminence who had testified their attachment to the suc-

³ Though no republican party, as I have elsewhere observed (see p. 487), could with any propriety be said to exist, it is easy to perceive that a certain degree of pro-

cession from the crown might have brought one together in no slight force. These two propositions are perfectly compatible.

cession received equitable rewards; but, most happily for himself and the kingdom, most reasonably according to the principles on which alone his throne could rest, the first prince of the house of Brunswick gave a decisive preponderance in his favour to Walpole and Townshend above Harcourt and Bolingbroke.

§ 14. The strong symptoms of disaffection which broke out in a few months after the king's accession, and which can be ascribed to no grievance, unless the formation of a whig ministry was to be termed one, prove the taint of the late times to have been deep-seated and extensive. The clergy, in many instances, perverted, by political sermons, their influence over the people, who, while they trusted that from those fountains they could draw the living waters of truth, became the dupes of factious lies and sophistry. Thus encouraged, the heir of the Stuarts landed in Scotland; and the spirit of that people being in a great measure jacobite, and very generally averse to the union, he met with such success as, had their independence subsisted, would probably have established him on the throne. But Scotland was now doomed to wait on the fortunes of her more powerful ally; and, on his invasion of England, the noisy partisans of hereditary right discredited their faction by its cowardice. Few rose in arms to support the rebellion, compared with those who desired its success, and did not blush to see the gallant savages of the Highlands shed their blood that a supine herd of priests and country gentlemen might enjoy the victory. The severity of the new government after the rebellion has been often blamed; but I know not whether, according to the usual rules of policy, it can be proved that the execution of two peers and thirty other persons, taken with arms in flagrant rebellion, was an unwarrantable excess of punishment. There seems a latent insinuation in those who have argued on the other side, as if the jacobite rebellion, being founded on an opinion of right, was more excusable than an ordinary treason—a proposition which it would not have been quite safe for the reigning dynasty to acknowledge. Clemency, however, is the standing policy of constitutional governments, as severity is of despotism; and if the ministers of George I. might have extended it to part of the inferior sufferers (for surely those of higher rank were the first to be selected) with safety to their master, they would have done well in sparing him the odium that attends all political punishments.

§ 15. It will be admitted on all hands at the present day that the charge of high treason in the impeachments against Oxford and Bolingbroke was an intemperate excess of resentment at their scandalous dereliction of the public honour and interest. The danger of a sanguinary revenge inflamed by party spirit is so tremendous that the worst of men ought perhaps to escape rather than suffer by a

retrospective, or, what is no better, a constructive extension of the law. The particular charge of treason was that in the negotiation for peace they had endeavoured to procure the city of Tournay for the king of France; which was maintained to be an adhering to the queen's enemies within the statute of Edward III. But as this construction could hardly be brought within the spirit of that law, and the motive was certainly not treasonable or rebellious, it would have been incomparably more constitutional to treat so gross a breach of duty as a misdemeanor of the highest kind. This angry temper of the commons led ultimately to the abandonment of the whole impeachment against lord Oxford; the upper house, though it had committed Oxford to the Tower, which seemed to prejudge the question as to the treasonable character of the imputed offence, having two years afterwards resolved that the charge of treason should be first determined, before they would enter on the articles of less importance; a decision with which the commons were so ill satisfied that they declined to go forward with the prosecution. The resolution of the peers was hardly conformable to precedent, to analogy, or to the dignity of the house of commons, nor will it perhaps be deemed binding on any future occasion; but the ministers prudently suffered themselves to be beaten, rather than aggravate the fever of the people by a prosecution so full of delicate and hazardous questions.

One of these questions, and by no means the least important, would doubtless have arisen upon a mode of defence alleged by the earl of Oxford in the house, when the articles of impeachment were brought up. "My lords," he said, "if ministers of state, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, it may, one day or other be the case of all the members of this august assembly." It was indeed undeniable that the queen had been very desirous of peace, and a party, as it were, to all the counsels that tended to it. Though it was made a charge against the impeached lords that the instructions to sign the secret preliminaries of 1711 with M. Mesnager, the French envoy, were not under the great seal, nor countersigned by any minister, they were certainly under the queen's signet, and had all the authority of her personal command. This must have brought on the yet unsettled and very delicate question of ministerial responsibility in matters where the sovereign has interposed his own command; a question better reserved, it might then appear, for the loose generalities of debate than to be determined with the precision of criminal law. Each party, in fact, had in its turn made use of the queen's personal authority as a shield; the whigs availed themselves of it to parry the attack made on their ministry, after its fall, for an alleged mismanagement of the war in

Spain before the battle of Almanza; and the modern constitutional theory was by no means so established in public opinion as to bear the rude brunt of a legal argument. Anne herself, like all her predecessors, kept in her own hands the reins of power; jealous, as such feeble characters usually are of those in whom she was forced to confide (especially after the ungrateful return of the duchess of Marlborough for the most affectionate condescension), and obstinate in her judgment from the very consciousness of its weakness, she took a share in all business, frequently presided in meetings of the cabinet, and sometimes gave directions without their advice. The defence set up by lord Oxford would undoubtedly not be tolerated at present, if alleged in direct terms, by either house of parliament; however, it may sometimes be deemed a sufficient apology for a minister, by those whose bias is towards a complaisance with power, to insinuate that he must either obey against his conscience, or resign against his will.

§ 16. Upon this prevalent dissatisfaction, and the general dangers of the established government, was founded that measure so frequently arraigned in later times, the substitution of septennial for triennial parliaments. The ministry deemed it too perilous for their master, certainly for themselves, to encounter a general election in 1717; but the arguments adduced for the alteration, as it was meant to be permanent, were drawn from its permanent expediency. Nothing can be more extravagant than what is sometimes confidently pretended by the ignorant, that the legislature exceeded its rights by this enactment; or, if that cannot legally be advanced, that it at least violated the trust of the people, and broke in upon the ancient constitution. The law for triennial parliaments was of little more than twenty years' continuance. It was an experiment, which, as was argued, had proved unsuccessful; it was subject, like every other law, to be repealed entirely or to be modified at discretion. As a question of constitutional expediency, the septennial bill was doubtless open at the time to one serious objection. Every one admitted that a parliament subsisting indefinitely during a king's life, but exposed at all times to be dissolved at his pleasure, would become far too little dependent on the people, and far too much so upon the crown; but, if the period of its continuance should thus be extended from three to seven years, the natural course of encroachment, or some momentous circumstances like the present, might lead to fresh prolongations, and gradually to an entire repeal of what had been thought so important a safeguard of its purity. Time has happily put an end to apprehensions which are not on that account to be reckoned unreasonable.

Many attempts have been made to obtain a return to ~~the~~ parliaments, the most considerable of which was in 1720, ~~when it~~

powerful talents of Walpole and his opponents were arrayed on this great question. It has been less debated in modern times than some others connected with parliamentary reformation. It may well be doubted whether triennial elections would make much perceptible difference in the course of government, and whether that difference would on the whole be beneficial. It will be found, I believe, on a retrospect of the last hundred years, that the house of commons would have acted, in the main, on the same principles had the elections been more frequent; and certainly the effects of a dissolution, when it has occurred in the regular order, have seldom been very important. It is also to be considered whether an assembly which so much takes to itself the character of a deliberative council on all matters of policy, ought to follow with the precision of a weather-glass the unstable prejudices of the multitude. There are many who look too exclusively at the functions of parliament as the protector of civil liberty against the crown, functions, it is true, most important, yet not more indispensable than those of steering a firm course in domestic and external affairs, with a circumspectness and providence for the future which no wholly democratical government has ever yet displayed. It is by a middle position between an oligarchical senate and a popular assembly that the house of commons is best preserved both in its dignity and usefulness, subject indeed to swerve towards either character by that continual variation of forces which act upon the vast machine of our commonwealth. But what seems more important than the usual term of duration is that this should be permitted to take its course, except in cases where some great change of national policy may perhaps justify its abridgment. The crown would obtain a very serious advantage over the house of commons if it should become an ordinary thing to dissolve parliament for some petty ministerial interest, or to avert some unpalatable resolution. Custom appears to have established, and with some convenience, the substitution of six for seven years as the natural life of a house of commons. And it may here be permitted to express a hope that the necessary dissolution of parliament within six months of a demise of the crown will not long be thought congenial to the spirit of our modern government.

§ 17. A far more unanimous sentence has been pronounced by posterity upon another great constitutional question that arose under George I. Lord Sunderland persuaded the king to renounce his important prerogative of making peers; and a bill was supported by the ministry, limiting the house of lords, after the creation of a very few more, to its actual numbers. The Scots were to have 25 hereditary, instead of 16 elective, members of the house, a provision neither easily reconciled to the union nor required by the general

terior of the bill. This measure was carried with no difficulty through the upper house, whose interests were so manifestly concerned in it. But a similar motive, concurring with the efforts of a powerful malcontent party, caused its rejection by the commons. It was justly thought a proof of the king's ignorance or indifference in everything that concerned his English crown, that he should have consented to so momentous a sacrifice, and Sunderland was reproached for so audacious an endeavour to strengthen his private faction at the expence of the fundamental laws of the monarchy. Those who maintained the expediency of limiting the peerage had recourse to uncertain theories as to the ancient constitution, and denied this prerogative to have been originally vested in the crown. A more plausible argument was derived from the abuse, as it was then generally accounted, of creating at once twelve peers in the late reign, for the sole end of establishing a majority for the court, a resource which would be always at the command of successive factions, till the British nobility might become as numerous and venal as that of some European states. It was argued that there was a fallacy in concluding the collective power of the house of lords to be augmented by its limitation, though every single peer would evidently become of more weight in the kingdom; that the wealth of the whole body must bear a less proportion to that of the nation, and would possibly not exceed that of the lower house, while on the other hand it might be indefinitely multiplied by fresh creations; that the crown would lose one great engine of corrupt influence over the commons, which could never be truly independent while its principal members were looking on it as a stepping-stone to hereditary honours.⁴

Though these reasonings, however, are not destitute of considerable weight, and the unlimited prerogative of augmenting the peerage is liable to such abuses, at least in theory, as might overthrow our form of government, while, in the opinion of some, whether erroneous or not, it has actually been exerted with too little discretion, the arguments against any legal limitation seem more decisive. The crown has been carefully restrained by statutes, and by the responsibility of its advisers; the commons, if they transgress their boundaries, are annihilated by a proclamation; but against the ambition, or, what is much more likely, the perverse haughtiness of the aristocracy, the constitution has not furnished such direct securities. And, as this would be prodigiously enhanced by a consciousness of their power, and by a sense of self-importance which every peer would derive from it after the limitation of their numbers, it might break out in pretensions very galling to the people, and in

⁴ The arguments on this side are urged by Addison, in the *Old Whig*; and by the author of a tract entitled *Six Questions Stated and Answered*,

in Westminster Hall, that new ecclesiastical canons are not binding on the laity, so greatly that it will ever be impossible to exercise it in any effectual manner. The convocation accordingly, with the exception of that in 1603, when they established some regulations, and that in 1640 (an unfortunate precedent), when they attempted some more, had little business but to grant subsidies, which however were from the time of Henry VIII. always confirmed by an act of parliament; an intimation, no doubt, that the legislature did not wholly acquiesce in their power even of binding the clergy in a matter of property. This practice of ecclesiastical taxation was discontinued in 1664, at a time when the authority and pre-eminence of the church stood very high, so that it could not then have seemed the abandonment of an important privilege. From this time the clergy have been taxed at the same rate and in the same manner with the laity.

§ 20. It was the natural consequence of this cessation of all business that the convocation, after a few formalities, either adjourned itself or was prorogued by a royal writ; nor had it ever, with the few exceptions above noticed, sat for more than a few days, till its supply could be voted. But, about the time of the Revolution, the party most adverse to the new order sedulously propagated a doctrine that the convocation ought to be advised with upon all questions affecting the church, and ought even to watch over its interests as the parliament did over those of the kingdom. The commons had so far encouraged this faction as to refer to the convocation the great question of a reform in the liturgy for the sake of comprehension, as has been mentioned in the last chapter, and thus put a stop to the king's design. It was not suffered to sit much during the rest of that reign, to the great discontent of its ambitious leaders. The most celebrated of these, Atterbury, published a book, entitled the Rights and Privileges of an English Convocation, in answer to one by Wake, afterwards archbishop of Canterbury. The speciousness of the former, sprinkled with competent learning on the subject, a graceful style, and an artful employment of topics, might easily delude at least the willing reader. Nothing indeed could, on reflection, appear more inconclusive than Atterbury's arguments. Were we even to admit the perfect analogy of a convocation to a parliament, it could not be doubted that the king may, legally speaking, prorogue the latter at his pleasure; and that, if neither money were required to be granted nor laws to be enacted, a session would be very short. The church had by prescription a right to be summoned in convocation; but no prescription could be set up for its longer continuance than the crown thought expedient; and it was too much to expect that William III. was to gratify his half-avowed

enemies with a privilege of remonstrance and interposition they had never enjoyed. In the year 1701 the lower house of convocation pretended to a right of adjourning to a different day from that fixed by the upper, and consequently of holding separate sessions. They set up other unprecedented claims to independence, which were checked by a prorogation. Their aim was in all respects to assimilate themselves to the house of commons, and thus both to set up the convocation itself as an assembly collateral to parliament, and in the main independent of it, and to maintain their co-ordinate power and equality in synodical dignity to the prelates' house. The succeeding reign, however, began under tory auspices, and the convocation was in more activity for some years than at any former period. The lower house of that assembly still distinguished itself by the most factious spirit, and especially by insolence towards the bishops, who passed in general for whigs, and whom, while pretending to assert the divine rights of episcopacy, they laboured to deprive of that pre-eminence in the Anglican synod which the ecclesiastical constitution of the kingdom had bestowed on them. None was more prominent in their debates than Atterbury himself, whom, in the zenith of tory influence, at the close of her reign, the queen reluctantly promoted to the see of Rochester.

§ 21. The new government at first permitted the convocation to hold its sittings; but they soon excited a flame which consumed themselves by an attack on Hoadley, bishop of Bangor, who had preached a sermon abounding with those principles concerning religious liberty of which he had long been the courageous and powerful assertor. The lower house of convocation thought fit to denounce, through the report of a committee, the dangerous tenets of this discourse, and of a work not long before published by the bishop. A long and celebrated war of pens instantly commenced, known by the name of the Bangorian controversy, managed, perhaps on both sides, with all the chicanery of polemical writers, and disgusting both from its tediousness and from the manifest unwillingness of the disputants to speak ingenuously what they meant; but as the principles of Hoadley and his advocates appeared in the main little else than those of protestantism and toleration, the sentence of the laity, in the temper that was then gaining ground as to ecclesiastical subjects, was soon pronounced in their favour; and the high-church party discredited themselves by an opposition to what now pass for the incontrovertible truisms of religious liberty. In the ferment of that age, it was expedient for the state to scatter a little dust over the angry insects; the convocation was accordingly prorogued in 1717, and has never again sat for any business.⁷ Those who are imbued with high notions

⁷ [It has been allowed to sit again in the present reign. Ed.]

of sacerdotal power have sometimes deplored this extinction of the Anglican great council; and though its necessity, as I have already observed, cannot possibly be defended as an ancient part of the constitution, there are not wanting specious arguments for the expediency of such a synod. It might be urged that the church, considered only as an integral member of the commonwealth; and the greatest corporation within it, might justly claim that right of managing its own affairs which belongs to every other association; that the argument from abuse is not sufficient, and is rejected with indignation when applied, as historically it might be, to representative governments and to civil liberty; that, in the present state of things, no reformation even of secondary importance can be effected without difficulty, nor any looked for in greater matters, both from the indifference of the legislature and the reluctance of the clergy to admit its interposition.

It is answered to these suggestions that we must take experience when we possess it, rather than analogy, for our guide; that ecclesiastical assemblies have in all ages and countries been mischievous where they have been powerful, which those of our wealthy and numerous clergy must always be; that if, notwithstanding, the convocation could be brought under the management of the state (which by the nature of its component parts might seem not unlikely), it must lead to the promotion of servile men and the exclusion of merit still more than at present; that the severe remark of Clarendon, who observes that of all mankind none form so bad an estimate of human affairs as churchmen, is abundantly confirmed by experience; that the representation of the church in the house of lords is sufficient for the protection of its interests; that the clergy have an influence which no other corporation enjoys over the bulk of the nation, and may abuse it for the purposes of undue ascendancy, unjust restraint, or factious ambition; that the hope of any real good in reformation of the church by its own assemblies, to whatever sort of reform we may look, is utterly chimerical; finally, that as the laws now stand, which few would incline to alter, the ratification of parliament must be indispensable for any material change. It seems to admit of no doubt that these reasonings ought much to outweigh those on the opposite side.

§ 22. In the last four years of the queen's reign some inroads had been made on the toleration granted to dissenters, whom the high-church party held in abhorrence. They had for a long time inveighed against what was called occasional conformity, or the compliance of dissenters with the provisions of the test act in order merely to qualify themselves for holding office or entering into corporations. Nothing could, in the eyes of sensible men, be more

advantageous to the church, if a reunion of those who had separated from it were advantageous, than this practice. Admitting even that the motive was self-interested, has an established government, in church or state, any better ally than the self-interestedness of mankind? Was it not what a presbyterian or independent minister would denounce as a base and worldly sacrifice? and if so, was not the interest of the Anglican clergy exactly in an inverse proportion to this? Any one competent to judge of human affairs would predict, what has turned out to be the case, that, when the barrier was once taken down for the sake of convenience, it would not be raised again for conscience; that the most latitudinarian theory, the most lukewarm dispositions in religion, must be prodigiously favourable to the reigning sect; and that the dissenting clergy, though they might retain, or even extend, their influence over the multitude, would gradually lose it with those classes who could be affected by the test. But even if the tory faction had been cool-headed enough for such reflections, it has unfortunately been sometimes less the aim of the clergy to reconcile those who differ from them than to keep them in a state of dishonour and depression. Hence, in the first parliament of Anne, a bill to prevent occasional conformity more than once passed the commons; and, on its being rejected by the lords, a great majority of William's bishops voting against the measure, an attempt was made to send it up again in a very reprehensible manner, tacked, as it was called, to a grant of money: so that, according to the pretension of the commons in respect to such bills, the upper house must either refuse the supply or consent to what they disapproved. This, however, having miscarried, and the next parliament being of better principles, nothing farther was done till 1711; when lord Nottingham, a vehement high-churchman, having united with the whigs against the treaty of peace, they were injudicious enough to gratify him by concurring in a bill to prevent occasional conformity. This was followed up by the ministry in a more decisive attack on the toleration, an act for preventing the growth of schism, which extended and confirmed one of Charles II., enforcing on all schoolmasters, and even on all teachers in private families, a declaration of conformity to the established church, to be made before the bishop, from whom a licence for exercising that profession was also to be obtained. It is impossible to doubt for an instant, that, if the queen's life had preserved the tory government for a few years, every vestige of the toleration would have been effaced.

§ 23. These statutes, records of their adversaries' power, the whigs, now lords of the ascendant, determined to abrogate. The dissenters were unanimously zealous for the house of Hanover and for the ministry; the church of very doubtful loyalty to the crown;

and still less affection to the whig name. In the session of 1719, accordingly, the act against occasional conformity, and that restraining education, were repealed.^a It had been the intention to have also repealed the test act; but the disunion then prevailing among the whigs had caused so formidable an opposition even to the former measures, that it was found necessary to abandon that project. Walpole, more cautious and moderate than the ministry of 1719, perceived the advantage of reconciling the church as far as possible to the royal family and to his own government; and it seems to have been an article in the tacit compromise with the bishops, who were not backward in exerting their influence for the crown, that he should make no attempt to abrogate the laws which gave a monopoly of power to the Anglican communion. We may presume also that the prelates undertook not to obstruct the acts of indemnity passed from time to time in favour of those who had not duly qualified themselves for the offices they held; and which, after some time becoming regular, in effect threw open the gates to protestant dissenters, even before the repeal of the test act in 1828.

§ 24. Meanwhile the principles of religious liberty, in all senses of the word, gained strength by this eager controversy, naturally pleasing as they are to the proud independence of the English character, and congenial to those of civil freedom, which both parties, tory as much as whig, had now learned sedulously to maintain. The nonjuring and high-church factions among the clergy produced few eminent men; and lost credit, not more by the folly of their notions than by their general want of scholarship and disregard of their duties. The university of Oxford was tainted to the core with jacobite prejudices; but it must be added that it never stood so low in respectability as a place of education. The government, on the other hand, was studious to promote distinguished men; and doubtless the hierarchy in the first sixty years of the eighteenth century might very advantageously be compared, in point of conspicuous ability, with that of an equal period that ensued. The maxims of persecution were silently abandoned, as well as its practice; Warburton, and others of less name, taught those of toleration with as much boldness as Hoadley, but without some of his more invidious tenets; the more popular writers took a liberal tone; the names of Locke and Montesquieu acquired immense authority; the courts of justice discountenanced any endeavour to revive oppressive statutes; and not long after the end of George II.'s reign, it was adjudged in the house of lords, upon the broadest principles of toleration laid down by lord Mansfield,

^a The whigs out of power, among whom was Walpole, factiously and inconsistently opposed the repeal of the schism act, so that it passed with much difficulty.

that nonconformity with the established church is recognised by the law, and not an offence at which it connives.

§ 25. Atterbury, bishop of Rochester, the most distinguished of the party denominated high-church, became the victim of his restless character and implacable disaffection to the house of Hanover. The pretended king, for some years after his competitor's accession, had fair hopes from different powers of Europe,—France, Sweden, Russia, Spain, Austria (each of whom, in its turn, was ready to make use of this instrument),—and from the powerful faction who panted for his restoration. This was unquestionably very numerous, though we have not as yet the means of fixing with certainty on more than comparatively a small number of names; but a conspiracy for an invasion from Spain and a simultaneous rising was detected in 1722, which implicated three or four peers, and among them the bishop of Rochester. The evidence, however, though tolerably convincing, being insufficient for a verdict at law, it was thought expedient to pass a bill of pains and penalties against this prelate, as well as others against two of his accomplices. The proof, besides many corroborating circumstances, consisted in three letters relative to the conspiracy, supposed to be written by his secretary Kelly, and appearing to be dictated by the bishop. He was deprived of his see, and banished the kingdom for life. This met with strong opposition, not limited to the enemies of the royal family, and is open to the same objection as the attainder of sir John Fenwick—the danger of setting aside those precious securities against a wicked government which the law of treason has furnished. As a vigorous assertion of the state's authority over the church we may commend the policy of Atterbury's deprivation, but perhaps this was ill purchased by a mischievous precedent. It is, however, the last act of a violent nature in any important matter which can be charged against the English legislature.

§ 26. No extensive conspiracy of the jacobite faction seems ever to have been in agitation after the fall of Atterbury. The pretender had his emissaries perpetually alert, and it is understood that an enormous mass of letters from his English friends is in existence;⁹ but very few had the courage, or rather folly, to plunge into so desperate a course as rebellion. Walpole's prudent and vigilant administration, without transgressing the boundaries of that free constitution for which alone the house of Brunswick had been preferred, kept in check the disaffected. He wisely sought the friendship of cardinal Fleury, aware that no other power in Europe

⁹ The Stuart Papers obtained from Rome, and now in her majesty's possession, furnish evidence of the jacobite intrigues, and affect some persons not hitherto sus-

pected. Lord Mahon has communicated some information from these papers in his *History of England*.

than France could effectually assist the banished family. After his own fall and the death of Fleury, new combinations of foreign policy arose; his successors returned to the Austrian connexion; a war with France broke out; the grandson of James II. became master, for a moment, of Scotland, and even advanced to the centre of this peaceful and unprotected kingdom. But this was hardly more ignominious to the government than to the jacobites themselves; none of them joined the standard of their pretended sovereign; and the rebellion of 1745 was conclusive, by its own temporary success, against the possibility of his restoration. From this time the government, even when in search of pretexts for alarm, could hardly affect to dread a name grown so contemptible as that of the Stuart party. It survived, however, for the rest of the reign of George II., in those magnanimous computations which had always been the best evidence of its courage and fidelity.

§ 27. Though the jacobite party had set before its eyes an object most dangerous to the public tranquillity, it ought to be admitted that they were rendered more numerous and formidable than was necessary by the faults of the reigning kings or of their ministers. They were not latterly actuated for the most part (perhaps with very few exceptions) by the slavish principles of indefeasible right, much less by those of despotic power. They had been so long in opposition to the court, they had so often spoken the language of liberty, that we may justly believe them to have been its friends. It was the policy of Walpole to keep alive the strongest prejudices in the mind of George II., obstinately retentive of prejudice, as such narrow and passionate minds always are, against the whole body of the tories. They were ill received at court, and generally excluded not only from those departments of office which the dominant party have a right to keep in their power, but from the commission of the peace, and every other subordinate trust. This illiberal and selfish course retained many, no doubt, in the pretender's camp, who must have perceived both the improbability of his restoration, and the difficulty of reconciling it with the safety of our constitution. He was indeed, as well as his son, far less worthy of respect than the contemporary Brunswick kings; without absolutely wanting capacity or courage, he gave the most undeniable evidence of his legitimacy by constantly resisting the counsels of wise men, and yielding to those of priests; while his son, the fugitive of Culloden, despised and deserted by his own party, insulted by the court of France, left with the advance of years even the respect and compassion which wait on unceasing misfortune, the last sad inheritance of the house of Stuart. But they were little known in England, and from unknown princes men are prone to hope much; if some could anticipate a redress of every evil from Frederic prince of Wales,

whom they might discover to be destitute of respectable qualities, it cannot be wondered at that others might draw equally flattering prognostics from the accession of Charles Edward. It is almost certain that, if either the claimant or his son had embraced the protestant religion, and had also manifested any superior strength of mind, the German prejudices of the reigning family would have cost them the throne, as they did the people's affections. Jacobitism, in the great majority, was one modification of the spirit of liberty burning strongly in the nation at this period. It gave a rallying point to that indefinite discontent which is excited by an ill opinion of rulers, and to that disinterested though ignorant patriotism which boils up in youthful minds. The government in possession was hated, not as usurped, but as corrupt; the banished line was demanded, not so much because it was legitimate, but because it was the fancied means of redressing grievances and regenerating the constitution. Such notions were doubtless absurd; but it is undeniable that they were common, and had been so almost from the Revolution. I speak only, it will be observed, of the English jacobites; in Scotland the sentiments of loyalty and national pride had a vital energy, and the Highland chieftains gave their blood, as freely as their southern allies did their wine, for the cause of their ancient kings.

No one can have looked in the most cursory manner at the political writings of these two reigns, or at the debates of parliament, without being struck by the continual predictions that our liberties were on the point of extinguishment, or at least by apprehensions of their being endangered. It might seem that little or nothing had been gained by the Revolution, and by the substitution of an elective dynasty. The clamorous invectives of this opposition, combined with the subsequent dereliction of avowed principles by many among them when in power, contributed more than anything else in our history to cast obloquy and suspicion, or even ridicule, on the name and occupation of patriots. Men of sordid and venal characters always rejoice to generalise so convenient a maxim as the non-existence of public virtue. It may not, however, be improbable, that many of those who took a part in this long contention were less insincere than it has been the fashion to believe, though led too far at the moment by their own passions, as well as by the necessity of colouring highly a picture meant for the multitude, and reduced afterwards to the usual compromises and concessions, without which power in this country is ever unattainable. But waiving a topic too generally historical for the present chapter, it will be worth while to consider what sort of ground there might be for some prevalent subjects of declamation; and whether the power of government had not, in several respects, been a good deal enhanced

since the beginning of the century. By the power of government I mean not so much the personal authority of the sovereign as that of his ministers, acting perhaps without his directions; which, since the reign of William, is to be distinguished, if we look at it analytically, from the monarchy itself.

§ 28. I. The most striking acquisition of power by the crown in the new model of government, if I may use such an expression, is the permanence of a regular military force. The reader cannot need to be reminded that no army existed before the civil war, that the guards in the reign of Charles II. were about 5000 men, that in the breathing-time between the peace of Ryswick and the war of the Spanish succession the commons could not be brought to keep up more than 7000 troops. Nothing could be more repugnant to the national prejudices than a standing army. The Tories, partly from regard to the ancient usage of the constitution, partly, no doubt, from a factious or disaffected spirit, were unanimous in protesting against it. The most disinterested and zealous lovers of liberty came with great suspicion and reluctance into what seemed so perilous an innovation. But the court, after the accession of the house of Hanover, had many reasons for insisting upon so great an augmentation of its power and security. It is remarkable to perceive by what stealthy advances this came on. Two long wars had rendered the army a profession for men in the higher and middling classes, and familiarised the nation to their dress and rank; it had achieved great honour for itself and the English name; and in the nature of mankind the patriotism of glory is too often an overmatch for that of liberty. The two kings were fond of warlike policy, the second of war itself; their schemes, and those of their ministers, demanded an imposing attitude in negotiation, which an army, it was thought, could best give; the cabinet was for many years entangled in alliances, shifting sometimes rapidly, but in each combination liable to produce the interruption of peace. In the new system which rendered the houses of parliament partakers in the executive administration, they were drawn themselves into the approbation of every successive measure, either on the propositions of ministers, or, as often happens more indirectly, but hardly less effectually, by passing a negative on those of their opponents. The number of troops for which a vote was annually demanded, after some variations, in the first years of George I., was, during the whole administration of sir Robert Walpole, except when the state of Europe excited some apprehension of disturbance, rather more than 17,000 men, independent of those on the Irish establishment, but including the garrisons of Minorca and Gibraltar. And this continued with little alteration to be our standing army in time of peace during the eighteenth century.

This army was always understood to be kept on foot, as it is still expressed in the preamble of every mutiny-bill, for better preserving the balance of power in Europe. The commons would not for an instant admit that it was necessary as a permanent force, in order to maintain the government at home. There can be no question, however, that the court saw its advantage in this light; and I am not perfectly sure that some of the multiplied negotiations on the continent in that age were not intended as a pretext for keeping up the army, or at least as a means of exciting alarm for the security of the established government. In fact, there would have been rebellions in the time of George I., not only in Scotland, which perhaps could not otherwise have been preserved, but in many parts of the kingdom, had the parliament adhered with too pertinacious bigotry to their ancient maxims. Yet these had such influence that it was long before the army was admitted by every one to be perpetual; and I do not know that it has ever been recognised as such in our statutes. Mr. Pulteney, so late as 1732, a man neither disaffected nor democratical, and whose views extended no farther than a change of hands, declared that he "always had been, and always would be, against a standing army of any kind; it was to him a terrible thing, whether under the denomination of parliamentary or any other. A standing army is still a standing army, whatever name it be called by; they are a body of men distinct from the body of the people; they are governed by different laws; blind obedience and an entire submission to the orders of their commanding officer is their only principle. The nations around us are already enslaved, and have been enslaved by those very means; by means of their standing armies they have every one lost their liberties; it is indeed impossible that the liberties of the people can be preserved in any country where a numerous standing army is kept up."

This wholesome jealousy, though it did not prevent what was indeed for many reasons not to be dispensed with, the establishment of a regular force, kept it within bounds which possibly the administration, if left to itself, would have gladly overleaped. A clause in the mutiny-bill, first inserted in 1718, enabling courts-martial to punish mutiny and desertion with death, which had hitherto been only cognizable as capital offences by the civil magistrate, was carried by a very small majority in both houses. An act was passed in 1735, directing that no troops should come within two miles of any place, except the capital or a garrisoned town, during an election. A more important measure was projected by men of independent principles, at once to secure the kingdom against attack, invaded as it had been by rebels in 1745, and thrown into the most ignominious panic on the rumours of a French

armament' in 1756, to take away the pretext for a large standing force, and perhaps to furnish a guarantee against any evil purposes to which in future times it might be subservient, by the establishment of a national militia, under the sole authority indeed of the crown, but commanded by gentlemen of sufficient estates, and not liable, except in war, to be marched out of its proper county. This favourite plan, with some reluctance on the part of the government, was adopted in 1757.

§ 29. II. It must be apparent to every one that since the Restoration, and especially since the Revolution, an immense power has been thrown into the scale of both houses of parliament, though practically in more frequent exercise by the lower, in consequence of their annual session during several months, and of their almost unlimited rights of investigation, discussion, and advice. But, if the crown should by any means become secure of an ascendancy in this assembly, it is evident that, although the prerogative, technically speaking, might be diminished, the power might be the same, or even possibly more efficacious.

I have mentioned in the last chapter both the provisions inserted in the act of settlement, with the design of excluding altogether the possessors of public office from the house of commons, and the modifications of them by several acts of the queen. These were deemed by the country party so inadequate to restrain the dependents of power from overspreading the benches of the commons, that perpetual attempts were made to carry the exclusive principle to a far greater length. In the two next reigns, if we can trust to the uncontradicted language of debate, or even to the descriptions of individuals in the lists of each parliament, we must conclude that a very undue proportion of dependents on the favour of government were made its censors and counsellors. There was still, however, so much left of an independent spirit, that bills for restricting the number of placemen, or excluding pensioners, met always with countenance; they were sometimes rejected by very slight majorities; and, after a time, sir Robert Walpole found it expedient to reserve his opposition for the surer field of the other house.¹⁰ After his fall, it was imputed with some justice to his successors, that they shrunk in power from the bold reformation which they had so frequently endeavoured to effect; the king was in-

¹⁰ By the act of 6 Anne, c. 7, all persons holding pensions from the crown during pleasure were made incapable of sitting in the house of commons; which was extended by 1 Geo. I. c. 56, to those who held them for any term of years. But the difficulty was to ascertain the fact; the government refusing information. Mr. Sandys accordingly proposed a

bill in 1700, by which every member of the commons was to take an oath that he did not hold any such pension, and that, in case of accepting one, he would disclose it to the house within fourteen days. This was carried by a small majority through the commons, but rejected in the other house, which happened again in 1731 and in 1757.

disgustingly averse to all retrenchment of his power, and they wanted probably both the inclination and the influence to cut off all corruption. Yet we owe to this ministry the place-bill of 1743, which, derided as it was at the time, seems to have had a considerable effect; excluding a great number of inferior officers from the house of commons, which has never since contained so revolting a list of court-deputies as it did in the age of Walpole.

But while this acknowledged influence of lucrative office might be presumed to operate on many stanch adherents of the actual administration, there was always a strong suspicion, or rather a general certainty, of absolute corruption. The proofs in single instances could never perhaps be established; which, of course is not surprising. But no one seriously called in question the reality of a systematic distribution of money by the crown to the representatives of the people. It is true that the appropriation of supplies, and the established course of the exchequer, render the greatest part of the public revenue secure from misapplication; but, under the head of secret service money, a very large sum was annually expended without account, and some other parts of the civil list were equally free from all public examination. The committee of secrecy appointed after the resignation of sir Robert Walpole endeavoured to elicit some distinct evidence of this misapplication; but the obscurity natural to such transactions, and the guilty collusion of subaltern accomplices, which shrouded themselves in the protection of the law, defeated every hope of punishment, or even personal disgrace. This practice of direct bribery continued, beyond doubt, long afterwards, and is generally supposed to have ceased about the termination of the American war.

§ 30. III. The co-operation of both houses of parliament with the executive government enabled the latter to convert to its own purpose what had often in former times been employed against it, the power of inflicting punishment for breach of privilege. As the subject of parliamentary privilege is of no slight importance, it will be convenient to bring the whole before the reader in a note at the close of this chapter, distinguishing the power, as it relates to offences committed by members of either house, or against them singly, or the houses of parliament collectively, or against the government and the public.

§ 31. IV. It is commonly and justly said that civil liberty is not only consistent with, but in its terms implies, the restrictive limitations of natural liberty which are imposed by law. But, as these are not the less real limitations of liberty, it can hardly be maintained that the subject's condition is not impaired by very numerous restraints upon his will, even without reference to their expediency. The price may be well paid, but it is still a price

that it costs some sacrifice to pay. Our statutes have been growing in bulk and multiplicity with the regular session of parliament, and with the new system of government; all abounding with prohibitions and penalties, which every man is presumed to know, but which no man, the judges themselves included, can really know with much exactness. We literally walk amidst the snares and pitfalls of the law. The very doctrine of the more rigid casuists, that men are bound in conscience to observe all the laws of their country, has become impracticable through their complexity and inconvenience; and most of us are content to shift off their penalties in the *mala prohibita* with as little scruple as some feel in risking those of graver offences. But what more peculiarly belongs to the present subject is the systematic encroachment upon ancient constitutional principles, which has for a long time been made through new enactments, proceeding from the crown, chiefly in respect to the revenue.¹¹ These may be traced indeed in the statute-book, at least as high as the Restoration, and really began in the arbitrary times of revolution which preceded it. They have, however, been gradually extended along with the public burthens, and as the severity of these has prompted fresh artifices of evasion. It would be curious, but not within the scope of this work, to analyze our immense fiscal law, and to trace the history of its innovations. These consist partly in taking away the cognizance of offences against the revenue from juries, whose partiality in such cases there was in truth much reason to apprehend, and vesting it either in commissioners of the revenue itself or in magistrates; partly in anomalous and somewhat arbitrary powers with regard to the collection; partly in deviations from the established rules of pleading and evidence, by throwing on the accused party in fiscal causes the burthen of proving his innocence, or by superseding the necessity of rigorous proof as to matters wherein it is ordinarily required; and partly in shielding the officers of the crown, as far as possible, from their responsibility for illegal actions, by permitting special circumstances of justification to be given in evidence without being pleaded, or by throwing impediments of various kinds in the way of the prosecutor, or by subjecting him to unusual costs in the event of defeat.

These restraints upon personal liberty, and, what is worse, these

¹¹ Among the modern statutes which have strengthened the hands of the executive power, we should mention the riot act, 1 Geo. I. stat. 2, c. 5, whereby all persons tumultuously assembled to the disturbance of the public peace, and not dispersing within one hour after proclamation made by a single magistrate,

are made guilty of a capital felony. I am by no means controverting the expediency of this law; but, especially when combined with the prompt aid of a military force, it is surely a compensation for much that may seem to have been thrown into the popular scale

which ought to be the basis of political consistency, there was an evident deviation from the true standard of public virtue; but the ignominy attached to the dereliction of friends for the sake of emolument, though it was every day incurred, must have tended gradually to purify the general character of parliament. Meanwhile the crown lost all that party attachments gained—a truth indisputable on reflection, though, while the crown and the party in power act in the same direction, the relative efficiency of the two forces is not immediately estimated. It was seen, however, very manifestly in the year 1746, when, after long bickering between the Pelhams and lord Granville, the king's favourite minister, the former, in conjunction with a majority of the cabinet, threw up their offices, and compelled the king, after an abortive effort at a new administration, to sacrifice his favourite, and replace those in power whom he could not exclude from it. The same took place in a later period of his reign, when, after many struggles, he submitted to the ascendancy of Mr. Pitt.

It seems difficult for any king of England, however conscientiously observant of the lawful rights of his subjects, and of the limitations they impose on his prerogative, to rest always very content with this practical condition of the monarchy. The choice of his counsellors, the conduct of government, are intrusted, he will be told, by the constitution to his sole pleasure; yet both as to the one and the other he finds a perpetual disposition to restrain his exercise of power; and though it is easy to demonstrate that the public good is far better promoted by the virtual control of parliament and the nation over the whole executive government than by adhering to the letter of the constitution, it is not to be expected that the argument will be conclusive to a royal understanding. Hence he may be tempted to play rather a petty game, and endeavour to regain, by intrigue and insincerity, that power of acting by his own will which he thinks unfairly wrested from him. A king of England, in the calculations of politics, is little more than one among the public men of the day—taller indeed, like Saul or Agamemnon, by the head and shoulders, and therefore with no slight advantages in the scramble, but not a match for the many unless he can bring some dexterity to second his strength, and make the best of the self-interest and animosities of those with whom he has to deal and of this there will generally be so much that in the long run he will be found to succeed in the greater part of his desires: thus George I. and George II., in whom the personal authority seems to have been at the lowest point it has ever reached, drew their ministers, not always willingly, into that course of continental politics which was supposed to serve the purposes of Hanover far better than of England. It is well known that the Walpoles and

the Pelhams condemned in private this excessive predilection of their masters for their native country, which alone could endanger their English throne; yet after the two latter brothers had inveighed against lord Granville, and driven him out of power for seconding the king's pertinacity in continuing the war of 1743, they went on themselves in the same track for at least two years, to the imminent hazard of losing for ever the Low Countries and Holland, if the French government, so indiscriminately charged with ambition, had not displayed extraordinary moderation at the treaty of Aix-la-Chapelle. The twelve years that ensued gave more abundant proofs of the submissiveness with which the schemes of George II. for the good of Hanover were received by his ministers, though not by his people; but the most striking instance of all is the abandonment by Mr. Pitt himself of all his former professions in pouring troops into Germany. I do not inquire whether a sense of national honour might not render some of these measures justifiable, though none of them were advantageous; but it is certain that the strong bent of the king's partiality forced them on against the repugnance of most statesmen, as well as of the great majority in parliament and out of it.

Comparatively, however, with the state of prerogative before the Revolution, we can hardly dispute that there has been a systematic diminution of the reigning prince's control, which, though it may be compensated or concealed in ordinary times by the general influence of the executive administration, is of material importance in a constitutional light. Independently of other consequences, which might be pointed out as probable or contingent, it affords a real security against endeavours by the crown to subvert or essentially impair the other parts of our government; for though a king may believe himself and his posterity to be interested in obtaining arbitrary power, it is far less likely that a minister should desire to do so. I mean arbitrary, not in relation to temporary or partial abridgments of the subject's liberty, but to such projects as Charles I. and James II. attempted to execute. What indeed might be effected by a king, at once able, active, popular, and ambitious, should such ever unfortunately appear in this country, it is not easy to predict: certainly his reign would be dangerous, on one side or other, to the present balance of the constitution. But against this contingent evil, or the far more probable encroachments of ministers, which, though not going the full length of despotic power, might slowly undermine and contract the rights of the people, no positive statutes can be devised so effectual as the vigilance of the people themselves, and their increased means of knowing and estimating the measures of their government.

§ 34. The publication of regular newspapers, not merely designed

which ought to be the basis of political consistency, there was an evident deviation from the true standard of public virtue; but the ignominy attached to the dereliction of friends for the sake of enshlement, though it was every day incurred, must have tended gradually to purify the general character of parliament. Meanwhile the crown lost all that party attachments gained—a truth indisputable on reflection, though, while the crown and the party in power act in the same direction, the relative efficiency of the two forces is not immediately estimated. It was seen, however, very manifestly in the year 1746, when, after long bickering between the Pelhams and lord Granville, the king's favourite minister, the former, in conjunction with a majority of the cabinet, threw up their offices, and compelled the king, after an abortive effort at a new administration, to sacrifice his favourite, and replace those in power whom he could not exclude from it. The same took place in a later period of his reign, when, after many struggles, he submitted to the ascendancy of Mr. Pitt.

It seems difficult for any king of England, however conscientiously observant of the lawful rights of his subjects, and of the limitations they impose on his prerogative, to rest always very content with this practical condition of the monarchy. The choice of his counsellors, the conduct of government, are intrusted, he will be told, by the constitution to his sole pleasure; yet both as to the one and the other he finds a perpetual disposition to restrain his exercise of power; and though it is easy to demonstrate that the public good is far better promoted by the virtual control of parliament and the nation over the whole executive government than by adhering to the letter of the constitution, it is not to be expected that the argument will be conclusive to a royal understanding. Hence he may be tempted to play rather a petty game, and endeavour to regain, by intrigue and insincerity, that power of acting by his own will which he thinks unfairly wrested from him. A king of England, in the calculations of politics, is little more than one among the public men of the day—taller indeed, like Saul or Agamemnon, by the head and shoulders, and therefore with no slight advantages in the scramble, but not a match for the many unless he can bring some dexterity to second his strength, and make the best of the self-interest and animosities of those with whom he has to deal and of this there will generally be so much that in the long run he will be found to succeed in the greater part of his desires: thus George I. and George II., in whom the personal authority seems to have been at the lowest point it has ever reached, drew their ministers, not always willingly, into that course of continental politics which was supposed to serve the purposes of Hanover far better than of England. It is well known that the Walpoles and

the Pelhams condemned in private this excessive profection of their masters for their native country, which alone could endanger their English throne; yet after the two latter brothers had inveighed against lord Granville, and driven him out of power for executing the king's pertinacity in continuing the war of 1743, they went on themselves in the same track for at least two years, to the imminent hazard of losing for ever the Low Countries and Holland, to the French government, so indiscriminately charged with ambition, had not displayed extraordinary moderation at the treaty of Aix-la-Chapelle. The twelve years that ensued gave more abundant proofs of the submissiveness with which the schemes of George II. for the good of Hanover were received by his ministers, though not by his people; but the most striking instance of all is the abandonment by Mr. Pitt himself of all his former professions in joining the party in Germany. I do not inquire whether a sense of national honour might not render some of these measures justifiable, though none of them were advantageous; but it is certain that the strong bias of the king's partiality forced them on against the repugnance of most statesmen, as well as of the great majority in parliament and out of it.

Comparatively, however, with the state of prerogative before the Revolution, we can hardly dispute that there has been a systematic diminution of the reigning prince's control, which, though it may be compensated or concealed in ordinary times by the general influence of the executive administration, is of material importance in a constitutional light. Independently of other considerations, which might be pointed out as probable or contingent, it affords a real security against endeavours by the crown to subvert or essentially impair the other parts of our government; for though a king may believe himself and his posterity to be interested in obtaining arbitrary power, it is far less likely that a minister should desire to do so. I mean arbitrary, not in relation to temporary or partial abridgments of the subject's liberty, but to such projects as Charles I. and James II. attempted to execute. What indeed might be effected by a king, at once able, active, popular, and ambitious, should seldom ever unfortunately appear in this country, it is not easy to predict: certainly his reign would be dangerous, on one side or other, to the present balance of the constitution. But against this contingent evil, or the far more probable encroachments of ministers, which, though not going the full length of despotic power, might slowly undermine and contract the rights of the people, no positive statute can be devised so effectual as the vigilance of the people themselves, and their increased means of knowing and estimating the measures of their government.

§ 34. The publication of regular newspapers, not merely designed

for the communication of intelligence, but for the discussion of political topics, may be referred to the latter part of the reign of Anne, when they obtained great circulation, and became the accredited organs of different factions.¹² The tory ministers were annoyed at the vivacity of the press, both in periodical and other writings, which led to a stamp-duty, intended chiefly to diminish their number, and was nearly producing more pernicious restrictions, such as renewing the licensing-act, or compelling authors to acknowledge their names. These, however, did not take place, and the government more honourably coped with their adversaries in the same warfare; nor, with Swift and Bolingbroke on their side, could they require, except indeed through the badness of their cause, any aid from the arm of power.¹³

In a single hour these two great masters of language were changed from advocates of the crown to tribunes of the people; both more distinguished as writers in this altered scene of their fortunes, and certainly among the first political combatants with the weapons of the press whom the world has ever known. Bolingbroke's influence was of course greater in England; and, with all the signal faults of his public character, with all the factiousness which dictated most of his writings, and the indefinite declamation or shallow reasoning which they frequently display, they have merits not always sufficiently acknowledged. He seems first to have made the tories reject their old tenets of exalted prerogative and hereditary right, and scorn the high-church theories which they had maintained under William and Anne. His *Dissertation on Parties*, and *Letters on the History of England*, are in fact written on whig principles (if I know what is meant by that name), in their general tendency; however a politician, who had always some particular end in view, may have fallen into several inconsistencies.¹⁴ The same character is due to the *Craftsman*, and to most of the temporary pamphlets directed against sir Robert Walpole. They teemed, it is true, with exaggerated declamations on the side of

¹² Upon examination of the valuable series of newspapers in the British Museum, I find very little expression of political feelings till 1710, after the trial of Sacheverell, and change of ministry. The *Daily Courant* and *Postman* then begin to attack the Jacobites, and the *Post-boy* the dissenters. But these newspapers were less important than the periodical sheets, such as the *Examiner* and *Medley*, which were solely devoted to party controversy.

¹³ Bolingbroke's letter to the *Examiner*, in 1710, excited so much attention that it was answered by lord Cowper, then chan-

cellor, in a letter to the *Tatler*. Somers *Tracts*, xiii. 75; where sir Walter Scott justly observes, that the fact of two such statesmen becoming the correspondents of periodical publications shows the influence they must have acquired over the public mind.

¹⁴ "A king of Great Britain," he says in his seventh Letter on the History of England, "is that supreme magistrate who has a negative voice in the legislature." This was in 1731. Nothing can be more unlike the original tone of toryism.

liberty; but that was the side they took; it was to generous prejudices they appealed, nor did they ever advert to the times before the Revolution but with contempt or abhorrence. Libels there were indeed of a different class, proceeding from the Jacobite school; but these obtained little regard; the Jacobites themselves, or such as affected to be so, having more frequently espoused that cause from a sense of dissatisfaction with the conduct of the reigning family than from much regard to the pretensions of the other. Upon the whole matter it must be evident to every person who is at all conversant with the publications of George II.'s reign, with the poems, the novels, the essays, and almost all the literature of the time, that what are called the popular or liberal doctrines of government were decidedly prevalent. The supporters themselves of the Walpole and Pelham administrations, though professedly whigs, and tenacious of Revolution principles, made complaints, both in parliament and in pamphlets, of the democratical spirit, the insubordination to authority, the tendency to republican sentiments, which they alleged to have gained ground among the people. It is certain that the tone of popular opinion gave some countenance to these assertions, though much exaggerated, in order to create alarm in the aristocratical classes and furnish arguments against redress of abuses.

§ 35. The two houses of parliament are supposed to deliberate with closed doors. It is always competent for any one member to insist that strangers be excluded; not on any special ground, but by merely enforcing the standing order for that purpose. It has been several times resolved that it is a high breach of privilege to publish any speeches or proceedings of the commons; though they have since directed their own votes and resolutions to be printed. Many persons have been punished by commitment for this offence; and it is still highly irregular, in any debate, to allude to the reports in newspapers, except for the purpose of animadverting on the breach of privilege. Notwithstanding this pretended strictness, notices of the more interesting discussions were frequently made public; and entire speeches were sometimes circulated by those who had sought popularity in delivering them. After the accession of George I. we find a pretty regular account of debates in an annual publication, Boyer's Historical Register, which was continued to the year 1737. They were afterwards published monthly, and much more at length, in the London and the Gentleman's Magazines; the latter, as is well known, improved by the pen of Johnson, yet not so as to lose by any means the leading scope of the arguments. It follows of course that the restriction upon the presence of strangers had been almost entirely dispensed with. A transparent veil was thrown over this innovation by disguising the

names of the speakers, or more commonly by printing only initial and final letters. This ridiculous affectation of concealment was extended to many other words in political writings, and had not wholly ceased in the American war.

It is almost impossible to overrate the value of this regular publication of proceedings in parliament, carried as it has been in our own time to nearly as great copiousness and accuracy as is probably attainable. It tends manifestly and powerfully to keep within bounds the supineness and negligence, the partiality and corruption, to which every parliament, either from the nature of its composition or the frailty of mankind, must more or less be liable. Perhaps the constitution would not have stood so long, or rather would have stood like an useless and untenanted mansion, if this unlawful means had not kept up a perpetual intercourse, a reciprocity of influence, between the parliament and the people. A stream of fresh air, boisterous perhaps sometimes as the winds of the north, yet as healthy and invigorating, flows in to renovate the stagnant atmosphere, and to prevent that *malaria* which self-interest and oligarchical exclusiveness are always tending to generate. Nor has its importance been less perceptible in affording the means of vindicating the measures of government, and securing to them, when just and reasonable, the approbation of the majority among the middle ranks, whose weight in the scale has been gradually increasing during the last and present centuries.

§ 36. This augmentation of the democratical influence, using that term as applied to the commercial and industrious classes in contradistinction to the territorial aristocracy, was the slow but certain effect of accumulated wealth and diffused knowledge, acting, however, on the traditional notions of freedom and equality which had ever prevailed in the English people. The nation, exhausted by the long wars of William and Anne, recovered strength in thirty years of peace that ensued; and in that period, especially under the prudent rule of Walpole, the seeds of our commercial greatness were gradually ripened. It was evidently the most prosperous season that England had ever experienced; and the progression, though slow, being uniform, the reign perhaps of George II. might not disadvantageously be compared, for the real happiness of the community, with that more brilliant but uncertain and oscillatory condition which has ensued. A distinguished writer has observed that the labourer's wages have never, at least for many ages, commanded so large a portion of subsistence as in this part of the eighteenth century.¹⁵ The public debt, though it excited alarms, from its magnitude, at which we are now accustomed to

¹⁵ Malthus, Principles of Political Economy (1820), p. 379.

smile, and though too little care was taken for redeeming it, did not press very heavily on the nation, as the low rate of interest evinces, the government securities at three per cent. having generally stood above par. In the war of 1743, which from the selfish practice of relying wholly on loans did not much retard the immediate advance of the country, and still more after the peace of Aix-la-Chapelle, a striking increase of wealth became perceptible. This was shown in one circumstance directly affecting the character of the constitution. The smaller boroughs, which had been from the earliest time under the command of neighbouring peers and gentlemen, or sometimes of the crown, were attempted by rich capitalists, with no other connexion or recommendation than one which is generally sufficient. The election of strangers by boroughs, and its natural concomitant, bribery, had begun to excite complaint by their increasing frequency, as early as the reign of George I., and led to the act rendering elections void, and inflicting severe penalties, for bribery, in 1728. But in the general election of 1747 much more of it took place than ever before. Though the prevalence of bribery is attested by the statute-book and the journals of parliament from the Revolution, it seems not to have broken down all flood-gates till near the end of the reign of George II. But the sale of seats in parliament, like any other transferable property, is never mentioned in any book that I remember to have seen of an earlier date than 1760. We may dispense therefore with the inquiry in what manner this extraordinary traffic has affected the constitution, observing only that its influence must have tended to counteract that of the territorial aristocracy, which is still sufficiently predominant. The country gentlemen, who claimed to themselves a character of more independence and patriotism than could be found in any other class, had long endeavoured to protect their ascendancy by excluding the rest of the community from parliament. This was the principle of the bill which, after being frequently attempted, passed into a law during the tory administration of Anne, requiring every member of the commons, except those for the universities, to possess, as a qualification for his seat, a landed estate, above all incumbrances, of 300*l.* a year.¹⁶ By a later act of George II., with which it was thought expedient by the government of the day to gratify the landed interest, this property must be stated on oath by every member on taking his seat, and, if required, at his election.¹⁷ This law has been repealed in the present reign.

¹⁶ 9 Anne, c. 5.¹⁷ 33 G. II. c. 20.

unjustifiable proceedings in 1680. Even since the Revolution we find too many proofs of encroaching pride or intemperate passion, to which a numerous assembly is always prone, and which the prevalent doctrine of the house's absolute power in matters of privilege has not contributed much to restrain. The most remarkable may be briefly noticed.

The commons of 1701, wherein a tory spirit was strongly predominant, by what were deemed its factious delays in voting supplies, and in seconding the measures of the king for the security of Europe, had exasperated all those who saw the nation's safety in vigorous preparations for war, and provoked at last the lords to the most angry resolution which one house of parliament in a matter not affecting its privileges has ever recorded against the other.⁵ The grand jury of Kent, and other freeholders of the county, presented accordingly a petition on the 8th of May, 1701, imploring them to turn their loyal addresses into bills of supply (the only phrase in the whole petition that could be construed into disrespect), and to enable his majesty to assist his allies before it should be too late. The tory faction was wrought to fury by this honest remonstrance. They voted that the petition was scandalous, insolent, and seditious, tending to destroy the constitution of parliament, and to subvert the established government of this realm; and ordered that Mr. Colepepper, who had been most forward in presenting the petition, and all others concerned in it, should be taken into custody of the sergeant. Though no attempt was made on this occasion to call the authority of the house into question by habeas corpus or other legal remedy, it was discussed in pamphlets and in general conversation, with little advantage to a power so arbitrary, and so evidently abused in the immediate instance.

A very few years after this high exercise of authority, it was called forth in another case, still more remarkable and even less warrantable. The house of commons had an undoubted right of determining all disputed returns to the writ of election, and consequently of judging upon the right of every vote. But as the house could not pretend that it had given this

right, or that it was not, like any other franchise, vested in the possessor by a legal title, no pretext of reason or analogy could be set up, for denying that it might also come, in an indirect manner at least, before a court of justice, and be judged by the common principles of law. One Ashby, however, a burgess of Aylesbury, having sued the returning officer for refusing his vote; and three judges of the king's bench, against the opinion of chief-justice Holt, having determined for different reasons that it did not lie, a writ of error was brought in the house of lords, when the judgment was reversed. The house of commons took this up indignantly, and passed various resolutions, asserting their exclusive right to take cognizance of all matters relating to the election of their members. The lords repelled these by contrary resolutions; That by the known laws of this kingdom, every person having a right to give his vote, and being wilfully denied by the officer who ought to receive it, may maintain an action against such officer to recover damage for the injury; That the contrary assertion is destructive of the property of the subject, and tends to encourage corruption and partiality in returning officers; that the declaring persons guilty of breach of privilege for prosecuting such actions, or for soliciting and pleading in them, is a manifest assuming a power to control the law, and hinder the course of justice, and subject the property of Englishmen to the arbitrary votes of the house of commons. They ordered a copy of these resolutions to be sent to all the sheriffs, and to be communicated by them to all the boroughs in their respective counties.

A prorogation soon afterwards followed, but served only to give breathing time to the exasperated parties; for it must be observed, that though a sense of dignity and privilege no doubt swelled the majorities in each house, the question was very much involved in the general whig and tory course of politics. But Ashby, during the recess, having proceeded to execution on his judgment, and some other actions having been brought against the returning officer of Aylesbury, the commons again took it up, and committed the parties to Newgate. They moved the

⁵ Resolved, That whatever ill consequences may arise from the so long deferring the supplies for the year's service are to be attributed to the fatal counsel of putting off the meeting of a parliament so long, and to unnecessary delays of the house of commons. Lords' Journals, 23rd June, 1701.

cession amidst the applause of the people. In the next session he was again committed on the same charge; a proceeding extremely violent and arbitrary.

It has been always deemed a most important and essential privilege of the houses of parliament, that they may punish in this summary manner by commitment all those who disobey their orders to attend as witnesses, or for any purposes of their constitutional duties. No inquiry could go forward before the house at large or its committees, without this power to enforce obedience: especially when the information is to be extracted from public officers against the secret wishes of the court. It is equally necessary (or rather more so, since evidence not being on oath in the lower house, there can be no punishment in the course of law), that the contumacy or prevarication of witnesses should incur a similar penalty. No man would seek to take away this authority from parliament, unless he is either very ignorant of what has occurred in other times and his own, or is a slave in the fetters of some general theory.

But far less can be advanced for several exertions of power on record in the Journals, which under the name of privilege must be reckoned by impartial men irregularities and encroachments, capable only at some periods of a kind of apology from the unsettled state of the constitution. The commons began, in the famous or infamous case of Floyd, to arrogate a power of animadverting upon political offences, which was then wrested from them by the upper house. But in the first parliament of Charles I. they committed Montagu (afterwards the noted semi-popish bishop) to the serjeant on account of a published book containing doctrines they did not approve. For this was evidently the main point, though he was also charged with reviling two persons who had petitioned the house, which bore a distant resemblance to a contempt. In the long parliament, even from its commencement, every boundary was swept away; it was sufficient to have displeased the majority by act or word; but no precedents can be derived from a crisis of force struggling against force. If we descend to the reign of William III., it will be easy to discover instances of commitments, laudable in their purpose, but of such doubtful legality and dangerous consequence, that no regard to the motive should induce us to justify the precedent. Graham and Burton,

the solicitors of the treasury in all the worst *statè* prosecutions under Charles and James, and Jenner, a baron of the exchequer, were committed to the Tower by the council immediately after the king's proclamation, with an intention of proceeding criminally against them. Some months afterwards, the suspension of the habeas corpus, which had taken place by bill, having ceased, they moved the king's bench to admit them to bail; but the house of commons took this up, and, after a report of a committee as to precedents, put them in custody of the serjeant-at-arms. On complaints of abuses in victualling the navy, the commissioners of that department were sent for in the serjeant's custody, and only released on bail ten days afterwards. But, without minutely considering the questionable instances of privilege that we may regret to find, I will select one wherein the house of commons appear to have gone far beyond either the reasonable or customary limits of privilege, and that with very little pretext of public necessity. In the reign of George I., a newspaper called *Mist's Journal* was notorious as the organ of the Jacobite faction. A passage full of the most impudent longings for the pretender's restoration having been laid before the house, it was resolved, May 23, 1721, "That the said paper is a false, malicious, scandalous, infamous, and traitorous libel, tending to alienate the affections of his majesty's subjects and to excite the people to sedition and rebellion, with an intention to subvert the present happy establishment, and to introduce popery and arbitrary power." They went on after this resolution to commit the printer *Mist* to Newgate, and to address the king that the authors and publishers of the libel might be prosecuted. It is to be observed that no violation of privilege either was, or indeed could be, alleged as the ground of this commitment; which seems to imply that the house conceived itself to be invested with a general power, at least in all political misdemeanors.

I have not observed any case more recent than this of *Mist*, wherein any one has been committed on a charge which could not possibly be interpreted as a contempt of the house, or a breach of its privilege. It became, however, the practice, without previously addressing the king, to direct a prosecution by the attorney-general for offences of a public nature, which the commons had learned in the course of any inquiry or which had been formally

laid before them. This seems to have been introduced about the beginning of the reign of Anne, and is undoubtedly a far more constitutional course than that of arbitrary punishment by over-straining their privilege. In some instances, libels have been publicly burned by the order of one or other house of parliament.

I have principally adverted to the powers exerted by the lower house of parliament, in punishing those guilty of violating their privileges. It will, of course, be understood that the lords are at least equal in authority. In some respects indeed they have gone beyond. I do not mean that they would be supposed at present to have cognizance of any offence whatever, upon which the commons could not animadvert. Notwithstanding what they claimed in the case of Floyd, the subsequent denial by the commons, and abandonment by themselves, of any original jurisdiction, must stand in the way of their assuming such authority over misdemeanors, more extensively at least than the commons, as has been shown, have in some instances exercised it. But, while the latter have, with very few exceptions, and none since the Restoration, contented themselves with commitment during the session, the lords have sometimes imposed fines, and on some occasions in the reign of George II., as well as later, have adjudged parties to imprisonment for a certain time. In one instance, so late as that reign, they sentenced a man to the pillory; and this had been done several times before. The judgments, however, of earlier ages, give far less credit to the jurisdiction than they take from it. Besides the ever-memorable case of Floyd, one John Blount, about the same time (27th Nov. 1621), was sentenced by the lords to imprisonment and hard labour in Bridewell during life.

It may surprise those who have heard of the happy balance of the English constitution, of the responsibility of every man to the law, and of the security of the subject from all unlimited power, especially as to personal freedom, that this power of awarding punishment at discretion of the houses of parliament is generally repented to be universal and uncontrollable. This indeed was by no means received at the time when the most violent usurpations under the name of privilege were first made; the power was questioned by the royalist party who became its victims, and among others, by the gallant

Welshman, Judge Jenkins, whom the long parliament had shut up in the Tower. But it has been several times brought into discussion before the ordinary tribunals; and the result has been, that if the power of parliament is not unlimited in right, there is at least no remedy provided against its excesses.

The house of lords in 1677 committed to the Tower four peers, among whom was the earl of Shaftesbury, for a high contempt; that is, for calling in question, during a debate, the legal continuance of parliament after a prorogation of more than twelve months. Shaftesbury moved the court of king's bench to release him upon a writ of habeas corpus. But the judges were unanimously of opinion that they had no jurisdiction to inquire into a commitment by the lords of one of their body, or to discharge the party during the session, even though there might be, as appears to have been the case, such technical informality on the face of the commitment, as would be sufficient in an ordinary case to set it aside.

Lord Shaftesbury was at this time in vehement opposition to the court. Without insinuating that this had any effect upon the judges, it is certain that a few years afterwards they were less inclined to magnify the privileges of parliament. Some who had been committed, very wantonly and oppressively by the commons in 1680, under the name of abhorers, brought actions for false imprisonment against Topham, the serjeant-at-arms. In one of these he put in what is called a plea to the jurisdiction, denying the competence of the court of king's bench, inasmuch as the alleged trespass had been done by order of the knights, citizens, and burgesses of parliament. But the judges overruled this plea, and ordered him to plead in bar to the action. We do not find that Topham complied with this; at least judgments appear to have passed against him in these actions. The commons, after the Revolution, entered on the subject, and summoned two of the late judges, Pemberton and Jones, to their bar. Pemberton answered that he remembered little of the case; but if the defendant should plead that he did arrest the plaintiff by order of the house, and should plead that to the jurisdiction of the king's bench, he thought, with submission, he could satisfy the house that such a plea ought to be overruled, and that he took the law to be so very clearly. The house pressed for his reasons, which he

rather declined to give. But on a subsequent day he fully admitted that the order of the house was sufficient to take any one into custody, but that it ought to be pleaded in bar, and not to the jurisdiction, which would be of no detriment to the party, nor effect his substantial defence. It did not appear, however, that he had given any intimation from the bench of so favourable a leaning towards the rights of parliament; and his present language might not uncharitably be ascribed to the change of times. The house resolved that the orders and proceedings of this house, being pleaded to the jurisdiction of the court of king's bench, ought not to be overruled; that the judges had been guilty of a breach of privilege, and should be taken into custody.

I have already mentioned that, in the course of the controversy between the two houses on the case of Ashby and White, the commons had sent some persons to Newgate for suing the returning officer of Aylesbury in defiance of their resolutions; and that, on their application to the king's bench to be discharged on their habeas corpus, the majority of the judges had refused it. Three judges, Powis, Gould, and Powell, held that the courts of Westminster Hall could have no power to judge of the commitments of the houses of parliament; that they had no means of knowing what were the privileges of the commons, and consequently could not know their boundaries; that the law and custom of parliament stood on its own basis, and was not to be decided by the general rules of law; that no one had ever been discharged from such a commitment, which was an argument that it could not be done. Holt, the chief justice, on the other hand, maintained that no privilege of parliament could destroy a man's right, such as that of bringing an action for a civil injury; that neither house of parliament could separately dispose of the liberty and property of the people, which could only be done by the whole legislature; that the judges were bound to take notice of the customs of parliament, because they are part of the law of the land, and might as well be learned as any other part of the law. "It is the law," he said, "that gives the queen her prerogative; it is the law gives jurisdiction to the house of lords, as it is the law limits the jurisdiction of the house of commons." The eight other judges having been consulted, though not judicially, are stated to have gone along

with the majority of the court, in holding that a commitment by either house of parliament was not cognizable at law. But from some of the resolutions of the lords on this occasion which I have quoted above, it may seem probable that, if a writ of error had been ever heard before them, they would have leaned to the doctrine of Holt, unless indeed withheld by the reflection that a similar principle might easily be extended to themselves.

It does not appear that any commitment for breach of privilege was disputed until the year 1751, when Mr. Alexander Murray, of whom mention has been made, caused himself to be brought before the court of king's bench on a habeas corpus. But the judges were unanimous in refusing to discharge him. "The house of commons," said Mr. justice Wright, "is a high court, and it is agreed on all hands that they have power to judge of their own privileges: it need not appear to us what the contempt is for; if it did appear, we could not judge thereof."—"This court," said Mr. justice Denison, "has no jurisdiction in the present case. We granted the habeas corpus, not knowing what the commitment was; but now it appears to be for a contempt of the privileges of the house of commons. What the privileges of either house are we do not know; nor need they tell us what the contempt was, because we cannot judge of it; for I must call this court inferior to the commons with respect to judging of their privileges and contempts against them." Mr. justice Foster agreed with the two others, that the house could commit for a contempt, which, he said, Holt had never denied in such a case as this before them. It would be unnecessary to produce later cases which have occurred since the reign of George II., and elicited still stronger expressions from the judges of their incapacity to take cognizance of what may be done by the houses of parliament.

Notwithstanding such imposing authorities, there have not been wanting some who have thought that the doctrine of uncontrollable privilege is both eminently dangerous in a free country, and repugnant to the analogy of our constitution. The manly language of lord Holt has seemed to rest on better principles of public utility, and even perhaps of positive law. It is not, however, to be inferred that the right of either house of parliament to commit persons, even not of their own body, to prison, for contempts of

breaches of privilege, ought to be called in question. In some cases this authority is as beneficial, and even indispensable, as it is ancient and established. Nor do I by any means pretend that if the warrant of commitment merely recites the party to have been guilty of a contempt or breach of privilege, the truth of such allegation could be examined upon a return to a writ of habeas corpus, any more than in an ordinary case of felony. Whatever injustice may thus be done cannot have redress by any legal means; because the house of commons (or the lords, as it may be) are the fit judges of the fact, and must be presumed to have determined it according to right. But it is a more doubtful question, whether, if they should pronounce an offence to be a breach of privilege, as in the case of the Aylesbury men, which a court of justice should perceive to be clearly none, or if they should commit a man on a charge of misdemeanor, and for no breach of privilege at all, as in the case of *Mist* the printer, such excesses of jurisdiction might not legally be restrained by the judges. If the resolutions of the lords in the business of *Ashby and White* are constitutional and true, neither house of parliament can create to itself any new privilege; a proposition surely so consonant to the rules of English law, which require prescription or statute as the basis for every right, that few will dispute it; and it must be still less lawful to exercise a jurisdiction over misdemeanors, by committing a party who would regularly be only held to bail on such a charge. Of this I am very certain, that if *Mist*, in the year 1721, had applied for his discharge on a habeas corpus, it would have been far more difficult to have opposed it on the score of precedent or of constitutional right, than it was for the attorney-general of *Charles I.*, nearly one hundred years before, to resist the famous arguments of *Selden* and *Littleton*, in the case of the *Buckinghamshire* gentlemen committed by the council. If a few scattered acts of power can make such precedents as a court of justice must take as its rule, I am sure the decision, neither in this case nor in that of *ship-money*, was so unconstitutional as we usually suppose: it was by dwelling on all authorities in favour of liberty, and by setting aside those which made against it, that our ancestors overthrew the claims of unbounded prerogative. Nor is this parallel less striking when we look at the tone of implicit obedience, respect, and confidence

with which the judges of the eighteenth century have spoken of the houses of parliament, as if their sphere were too low for the cognizance of such a transcendent authority. The same language, almost to the words, was heard from the lips of the *Hydes* and *Berkeleys* in the preceding age, in reference to the king and to the privy council. But as, when the spirit of the government was almost wholly monarchical, so since it has turned chiefly to an aristocracy, the courts of justice have been swayed towards the predominant influence; not, in general, by any undue motives, but because it is natural for them to support power, to shun offence, and to shelter themselves behind precedent. They have also sometimes had in view the analogy of parliamentary commitments to their own power of attachment for contempt, which they hold to be equally uncontrollable, a doctrine by no means so dangerous to the subject's liberty, but liable also to no trifling objections.

The consequences of this utter irresponsibility in each of the two houses will appear still more serious when we advert to the unlimited power of punishment which it draws with it. The commons indeed do not pretend to imprison beyond the session; but the lords have imposed fines and definite imprisonment, and attempts to resist these have been unsuccessful. If the matter is to rest upon precedent, or upon what overrides precedent itself, the absolute failure of jurisdiction in the ordinary courts, there seems nothing (decency and discretion excepted) to prevent their repeating the sentences of *James I.*'s reign, whipping, branding, hard labour for life. Nay, they might order the usher of the black rod to take a man from their bar, and hang him up in the lobby. Such things would not be done, and, being done, would not be endured; but it is much that any sworn ministers of the law should, even by indefinite language, have countenanced the legal possibility of tyrannous power in England. The temper of government itself, in modern times, has generally been mild; and this is probably the best ground of confidence in the discretion of parliament; but popular, that is, numerous bodies, are always prone to excess, both from the reciprocal influences of their passions, and the consciousness of irresponsibility, for which reasons a democracy, that is the absolute government of the majority, is in general the most tyrannical of any. Public opinion, it is true, is

homines) of the land; meaning doubtless the inferior tenants in capite. These laws, indeed, are questionable, and there is a great want of unequivocal records till almost the end of the thirteenth century. The representatives of boroughs are first distinctly mentioned in 1326, under Robert I.; though some have been of opinion that vestiges of their appearance in parliament may be traced higher; but they are not enumerated among the classes present in one held in 1315. In the ensuing reign of David II., the three estates of the realm are expressly mentioned as the legislative advisers of the crown.

A Scots parliament resembled an English one in the mode of convocation, in the ranks that composed it, in the enacting powers of the king, and the necessary consent of the three estates; but differed in several very important respects. No freeholders, except tenants in capite, had ever any right of suffrage; which may, not improbably, have been in some measure owing to the want of that Anglo-Saxon institution, the county-court. These feudal tenants of the crown came in person to parliament, as they did in England till the reign of Henry III., and sat together with the prelates and barons in one chamber. A prince arose in Scotland in the first part of the fifteenth century, resembling the English Justinian in his politic regard to strengthening his own prerogative and to maintaining public order. It was enacted by a law of James I., in 1427, that the smaller barons and free tenants "need not to come to parliament, so that of every sheriffdom there be sent two or more wise men, chosen at the head court," to represent the rest. These were to elect a speaker, through whom they were to communicate with the king and other estates. This was evidently designed as an assimilation to the English house of commons. But the statute not being imperative, no regard was paid to this permission; and it is not till 1587 that we find the representation of the Scots counties finally established by law; though one important object of James's policy was never attained, the different estates of parliament having always voted promiscuously, as the spiritual and temporal lords in England.

§ 3. But no distinction between the national councils of the two kingdoms was more essential than what appears to have been introduced into the Scots parliament under David II. In the year 1367 a parliament having met at Scone, a committee was chosen by the three estates, who seem to have had full powers delegated to them, the others returning home on account of the advanced season. The same was done in one held next year without any assigned pretext. But in 1369 this committee was chosen only to prepare all matters determinable in parliament, or fit to be therein treated, for the decision of the three estates on the last day but one of the session. The

former scheme appeared possibly, even to those careless and unwilling legislators, too complete an abandonment of their function. But even modified as it was in 1369, it tended to devolve the whole business of parliament on this elective committee, subsequently known by the appellation of lords of the articles. It came at last to be the general practice, though some exceptions to this rule may be found, that nothing was laid before parliament without their previous recommendation; and there seems reason to think that in the first parliament of James I., in 1424, such full powers were delegated to the committee as had been granted before in 1367 and 1368, and that the three estates never met again to sanction their resolutions. The preparatory committee is not uniformly mentioned in the preamble of statutes made during the reign of this prince and his two next successors; but there may be no reason to infer from thence that it was not appointed. From the reign of James IV. the lords of articles are regularly named in the records of every parliament.

It is said that a Scots parliament, about the middle of the fifteenth century, consisted of near 190 persons. We do not find, however, that more than half this number usually attended. A list of those present in 1472 gives but fourteen bishops and abbots, twenty-two earls and barons, thirty-four lairds or lesser tenants in capite, and eight deputies of burghs. The royal burghs entitled to be represented in parliament were above thirty; but it was a common usage to choose the deputies of other towns as their proxies. The great object with them, as well as with the lesser barons, was to save the cost and trouble of attendance. It appears indeed that they formed rather an insignificant portion of the legislative body. They are not named as consenting parties in several of the statutes of James III.; and it seems that on some occasions they had not been summoned to parliament, for an act was passed in 1504, "that the commissaries and headmen of the burghs be warned when taxes or constitutions are given, to have their advice therein, as one of the three estates of the realm." This, however, is an express recognition of their right, though it might have been set aside by an irregular exercise of power.

§ 4. It was a natural result from the constitution of a Scots parliament, together with the general state of society in that kingdom, that its efforts were almost uniformly directed to augment and invigorate the royal authority. Their statutes afford a remarkable contrast to those of England in the absence of provisions against the exorbitances of prerogative. Robertson has observed that the kings of Scotland, from the time at least of James I., acted upon a steady system of repressing the aristocracy; and though this has been called too refined a supposition, and attempts have been made to explain otherwise their conduct, it seems strange to deny the opera-

tion of a motive so natural, and so readily to be inferred from their measures. The causes so well pointed out by this historian, and some that might be added; the defensible nature of great part of the country; the extensive possessions of some powerful families; the influence of feudal tenure and Celtic clanship; the hereditary jurisdictions, hardly controlled, even in theory, by the supreme tribunals of the crown; the custom of entering into bonds of association for mutual defence; the frequent minorities of the reigning princes; the necessary abandonment of any strict regard to monarchical supremacy during the struggle for independence against England; the election of one great nobleman to the crown, and its devolution upon another; the residence of the two first of the Stuart name in their own remote domains; the want of any such effective counterpoise to the aristocracy as the sovereigns of England possessed in its yeomanry and commercial towns; all these together placed the kings of Scotland in a situation which neither for their own nor their people's interest they could be expected to endure. But an impatience of submitting to the insolent and encroaching temper of their nobles drove James I. (before whose time no settled scheme of reviving the royal authority seems to have been conceived) and his two next descendants into some courses which, though excused or extenuated by the difficulties of their position, were rather too precipitate and violent, and redounded at least to their own destruction. The reign of James IV., from his accession in 1488 to his unhappy death at Flodden, in 1513, was the first of tolerable prosperity; the crown having by this time obtained no inconsiderable strength, and the course of law being somewhat more established, though the aristocracy were abundantly capable of withstanding any material encroachment upon their privileges.

Though subsidies were of course occasionally demanded, yet from the poverty of the realm and the extensive domains which the crown retained, they were much less frequent than in England, and thus one principal source of difference was removed; nor do we read of any opposition in parliament to what the lords of articles thought fit to propound. Those who disliked the government stood aloof from such meetings, where the sovereign was in his vigour, and had sometimes crushed a leader of faction by a sudden stroke of power; confident that they could better frustrate the execution of laws than their enactment, and that questions of right and privilege could never be tried so advantageously as in the field. Hence it is, as I have already observed, that we must not look to the statute-book of Scotland for many limitations of monarchy. Even in one of James II., which enacts that none of the royal domains shall for the future be alienated, and that the king and his successors shall be sworn to observe this law it may be conjectured that a provision

rather derogatory in semblance to the king's dignity was introduced by his own suggestion as an additional security against the importunate solicitations of the aristocracy whom the statute was designed to restrain. The next reign was the struggle of an imprudent and, as far as his means extended, despotic prince against the spirit of his subjects. In a parliament of 1487, we find almost a solitary instance of a statute that appears to have been directed against some illegal proceedings of the government. It is provided that all civil suits shall be determined by the ordinary judges, and not before the king's council. James III. was killed the next year in attempting to oppose an extensive combination of the rebellious nobility. In the reign of James IV., the influence of the aristocracy shows itself rather more in legislation; and two peculiarities deserve notice, in which, as it is said, the legislative authority of a Scots parliament was far higher than that of our own. They were not only often consulted about peace or war, which in some instances was the case in England, but, at least in the sixteenth century, their approbation seems to have been necessary. This, though not consonant to our modern notions, was certainly no more than the genius of the feudal system and the character of a great deliberative council might lead us to expect; but a more remarkable singularity was, that what had been propounded by the lords of articles, and received the ratification of the three estates, did not require the king's consent to give it complete validity. Such at least is said to have been the Scots constitution in the time of James VI.; though we may demand very full proof of such an anomaly, which the language of their statutes, expressive of the king's enacting power, by no means leads us to infer.

§ 5. The kings of Scotland had always their aula or curia regis, claiming a supreme judicial authority, at least in some causes, though it might be difficult to determine its boundaries, or how far they were respected. They had also bailiffs to administer justice in their own domains, and sheriffs in every county for the same purpose, wherever grants of regality did not exclude their jurisdiction. These regalities were hereditary and territorial; they extended to the infliction of capital punishment; the lord possessing them might reclaim or repledge (as it was called, from the surety he was obliged to give that he would himself do justice) any one of his vassals who was accused before another jurisdiction. The barons, who also had cognizance of most capital offences, and the royal boroughs enjoyed the same privilege. An appeal lay, in civil suits, from the baron's court to that of the sheriff or lord of regality, and ultimately to the parliament, or to a certain number of persons to whom it delegated its authority. This appellative jurisdiction of parliament, as well as that of the king's privy council, which was original, came, by a

series of provisions from the year 1425 to 1532, into the hands of a supreme tribunal thus gradually constituted in its present form, the Court of Session. It was composed of fifteen judges, half of whom, besides the president, were at first churchmen, and soon established an entire subordination of the local courts in all civil suits. But it possessed no competence in criminal proceedings; the hereditary jurisdictions remained unaffected for some ages, though the king's two justiciaries, replaced afterwards by a court of six judges, went their circuits even through those counties wherein charters of regality had been granted. Two remarkable innovations seem to have accompanied, or to have been not far removed in time from, the first formation of the court of session; the discontinuance of juries in civil causes, and the adoption of so many principles from the Roman law as have given the jurisprudence of Scotland a very different character from our own.

§ 6. In the reign of James V. it might appear probable that by the influence of laws favourable to public order, better enforced through the council and court of session than before, by the final subjugation of the house of Douglas and of the earls of Ross in the North, and some slight increase of wealth in the towns, conspiring with the general tendency of the sixteenth century throughout Europe, the feudal spirit would be weakened and kept under in Scotland, or display itself only in a parliamentary resistance to what might become in its turn dangerous, the encroachments of arbitrary power. But immediately afterwards a new and unexpected impulse was given; religious zeal, so blended with the ancient spirit of aristocratic independence that the two motives are scarcely distinguishable, swept before it in the first whirlwind almost every vestige of the royal sovereignty. The Roman catholic religion was abolished with the forms indeed of a parliament, but of a parliament not summoned by the crown, and by acts that obtained not its assent. The Scots church had been immensely rich; its riches had led, as everywhere else, to neglect of duties and dissoluteness of life; and these vices had met with their usual punishment in the people's hatred.¹ The reformed doctrines gained a more rapid and general ascendancy than in England, and were accompanied with a more strenuous and uncompromising enthusiasm. It is probable that no sovereign retaining a strong attachment to the ancient creed would long have been permitted to reign; and Mary is entitled to every presumption, in the great controversy that belongs to her name, that can reasonably be founded on this admission. But without deviating into that long and intricate discussion, it may be given as the probable result of fair inquiry that to impeach the characters

¹ At least one half of the wealth of Scotland was in the hands of the clergy chiefly of a few individuals.

of most of her adversaries would be a far easier task than to exonerate her own.²

§ 7. The history of Scotland from the reformation assumes a character, not only unlike that of preceding times, but to which there is no parallel in modern ages. It became a contest, not between the crown and the feudal aristocracy, as before, nor between the asserters of prerogative and of privilege, as in England, nor between the possessors of established power and those who deemed themselves oppressed by it, as is the usual source of civil discord, but between the temporal and spiritual authorities, the crown and the church—that in general supported by the legislature, this sustained by the voice of the people. Nothing of this kind, at least in anything like so great a degree, has occurred in other protestant countries—the Anglican church being, in its original constitution, bound up with the state as one of its component parts, but subordinate to the whole; and the ecclesiastical order in the kingdoms and commonwealths of the Continent being either destitute of temporal authority or at least subject to the civil magistrate's supremacy.

Knox, the founder of the Scots reformation, and those who concurred with him, both adhered to the theological system of Calvin, and to the scheme of polity he had introduced at Geneva, with such modifications as became necessary from the greater scale

² I have read a good deal on this celebrated controversy; but where so much is disputed it is not easy to form an opinion on every point. But, upon the whole, I think there are only two hypotheses that can be advanced with any colour of reason. The first is, that the murder of Darnley was projected by Bothwell, Maitland, and some others, without the queen's express knowledge, but with a reliance on her passion for the former, which would lead her both to shelter him from punishment, and to raise him to her bed; and that, in both respects, this expectation was fully realised by a criminal connivance at the escape of one whom she must believe to have been concerned in her husband's death, and by a still more infamous marriage with him. This, it appears to me, is a conclusion that may be drawn by reasoning on admitted facts, according to the common rules of presumptive evidence. The second supposition is, that she had given a previous consent to the assassination. This is rendered probable by several circumstances, and especially by the famous letters and sonnets, the genuineness of which has been so

warmly disputed. I must confess that they seem to me authentic, and that Mr. Laing's dissertation on the murder of Darnley has rendered Mary's innocence, even as to participation in that crime, an untenable proposition.

I shall dismiss a subject so foreign to my purpose with remarking a fallacy which affects almost the whole argument of Mary's most strenuous advocates. They seem to fancy that if the earls of Murray and Morton, and secretary Maitland of Lethington, can be proved to have been concerned in Darnley's murder, the queen herself is at once absolved. But it is generally agreed that Maitland was one of those who conspired with Bothwell for this purpose; and Morton, if he were not absolutely consenting, was, by his own acknowledgment at his execution, apprised of the conspiracy. With respect to Murray indeed there is not a shadow of evidence, nor had he any probable motive to second Bothwell's schemes; but, even if his participation were presumed, it would not alter in the slightest degree the proofs as to the queen.

responsible, in the first instance, to his presbytery for words so spoken, of which the king and council could not judge without violating the immunities of the church. Precedents for such an immunity it would not have been difficult to find; but they must have been sought in the archives of the enemy. It was rather early for the new republic to emulate the despotism she had overthrown. Such, however, is the uniformity with which the same passions operate on bodies of men in similar circumstances; and so greedily do those whose birth has placed them far beneath the possession of power, intoxicate themselves with its unaccustomed enjoyments.

§ 8. James, however, and his councillors were not so feeble as to endure this open renewal of those extravagant pretensions which Rome had taught her priesthood to assert. Melville fled to England; and a parliament that met the same year sustained the supremacy of the civil power with that violence and dangerous latitude of expression so frequent in the Scots statute-book. It was made treason to decline the jurisdiction of the king or council in any matter, to seek the diminution of the power of any of the three estates of parliament, which struck at all that had been done against episcopacy, to utter, or to conceal, when heard from others in sermons, or familiar discourse, any false or slanderous speeches to the reproach of the king, his council, or their proceedings, or to the dishonour of his parents and progenitors, or to meddle in the affairs of state. It was forbidden to treat or consult on any matter of state, civil or ecclesiastical, without the king's express command—thus rendering the general assembly for its chief purposes, if not its existence, altogether dependent on the crown. Such laws not only annihilated the pretended immunities of the church, but went very far to set up that tyranny which the Stuarts afterwards exercised in Scotland till their expulsion. These were in part repealed, so far as affected the church, in 1592; but the crown retained the exclusive right of convening its general assembly, to which the presbyterian hierarchy still gives but an evasive and reluctant obedience.

These bold demagogues were not long in availing themselves of the advantages which they had obtained in the parliament of 1592, and through the troubled state of the realm. They began again to intermeddle with public affairs, the administration of which was sufficiently open to censure. This licence brought on a new crisis in 1596. Black, one of the ministers of St. Andrews, inveigling against the government from the pulpit, painted the king and queen, as well as their council, in the darkest colours, as dissembling enemies to religion. James, incensed at this attack, caused him to be summoned before the privy council. The clergy decided to make common cause with the accused. The council of the church, a

standing committee lately appointed by the general assembly, enjoined Black to decline the jurisdiction. The king by proclamation directed the members of this council to retire to their several parishes. They resolved, instead of submitting, that since they were convened by the warrant of Christ, in a most needful and dangerous time, to see unto the good of the church, they should obey God rather than man. The king offered to stop the proceedings, if they would but declare that they did not decline the civil jurisdiction absolutely, but only in the particular case, as being one of slander, and consequently of ecclesiastical competence. For Black had asserted before the council, that speeches delivered in the pulpits, although alleged to be treasonable, could not be judged by the king until the church had first taken cognizance thereof. But these ecclesiastics, in the full spirit of the thirteenth century, determined by a majority not to recede from their plea. Their contest with the court soon excited the populace of Edinburgh, and gave rise to a tumult which, whether dangerous or not to the king, was what no government could pass over without utter loss of authority.

§ 9. It was in church assemblies alone that James found opposition. His parliament, as had invariably been the case in Scotland, went readily into all that was proposed to them; nor can we doubt that the gentry must for the most part have revolted from these insolent usurpations of the ecclesiastical order. It was ordained in parliament that every minister should declare his submission to the king's jurisdiction in all matters civil and criminal, that no ecclesiastical judicatory should meet without the king's consent, and that a magistrate might commit to prison any minister reflecting in his sermons on the king's conduct. He had next recourse to an instrument of power more successful frequently than intimidation, and generally successful in conjunction with it—gaining over the members of the general assembly, some by promises, some by exciting jealousies, till they surrendered no small portion of what had passed for the privileges of the church. The crown obtained by their concession, which then seemed almost necessary to confirm what the legislature had enacted, the right of convoking assemblies, and of nominating ministers in the principal towns. James followed up this victory by a still more important blow. It was enacted that fifty-one ministers, on being nominated by the king to titular bishoprics and other prelacies, might sit in parliament as representatives of the church. This seemed justly alarming to the opposite party; nor could the general assembly be brought to acquiesce without such very considerable restrictions upon these suspicious commissioners, by which name they prevailed to have them called, as might in some measure afford security against the revival of that

articles. These had doubtless been originally nominated by the several estates in parliament, solely to expedite the management of business, and relieve the entire body from attention to it. But, as early as 1561, we find a practice established, that the spiritual lords should choose the temporal, generally eight in number, who were to sit on this committee, and conversely; the burgesses still electing their own. To these it became usual to add some of the officers of state; and in 1617 it was established that eight of them should be on the list. Charles procured, without authority of parliament, a further innovation in 1633. The bishops chose eight peers, the peers eight bishops; and these appointed sixteen commissioners of shires and boroughs. Thus the whole power was devolved upon the bishops, the slaves and sycophants of the crown. The parliament itself met only on two days, the first and last of their pretended session, the one time in order to choose the lords of articles, the other to ratify what they proposed. So monstrous an anomaly could not long subsist in a high-spirited nation. This improvident assumption of power by low-born and odious men precipitated their downfall, and made the destruction of the hierarchy appear the necessary guarantee for parliamentary independence, and the ascendant of the aristocracy. But lest the court might, in some other form, regain this preliminary or initiative voice in legislation, which the experience of many governments has shown to be the surest method of keeping supreme authority in their hands, it was enacted in 1641, that each estate might choose lords of articles or not, at its discretion; but that all propositions should in the first instance be submitted to the whole parliament, by whom such only as should be thought fitting might be referred to the committee of articles for consideration.

§ 11. This parliament, however, neglected to abolish one of the most odious engines that tyranny ever devised against public virtue, the Scots law of treason. It had been enacted by a statute of James I. in 1424, that all leasing-makers, and tellers of what might engender discord between the king and his people, should forfeit life and goods. The act was renewed under James II., and confirmed in 1540. It was aimed at the factious aristocracy, who perpetually excited the people by invidious reproaches against the king's administration. But in 1584, a new antagonist to the crown having appeared in the presbyterian pulpits, it was determined to silence opposition by giving the statute of leasing-making, as it was denominated, a more sweeping operation. Its penalties were accordingly extended to such as should "utter untrue or slanderous speeches, to the disdain, reproach, and contempt of his highness, his parents and progenitors, or should meddle in the affairs of his highness or his estate." The "hearers and not reporters thereof"

were subjected to the same punishment. It may be remarked that these Scots statutes are worded with a latitude never found in England, even in the worst times of Henry VIII. Lord Balmerino, who had opposed the court in the parliament of 1633, retained in his possession a copy of an apology intended to have been presented by himself and other peers in their exculpation, but from which they had desisted, in apprehension of the king's displeasure. This was obtained clandestinely, and in breach of confidence, by some of his enemies; and he was indicted on the statute of leasing-making, as having concealed a slander against his majesty's government. A jury was returned with gross partiality; yet so outrageous was the attempted violation of justice that Balmerino was only convicted by a majority of eight against seven. For in Scots juries a simple majority was sufficient, as it is still in all cases except treason. It was not thought expedient to carry this sentence into execution; but the kingdom could never pardon its government so infamous a stretch of power. The statute itself, however, seems not to have shared the same odium; we do not find any effort made for its repeal; and the ruling party in 1641, unfortunately, did not scruple to make use of its sanguinary provisions against their own adversaries.

The conviction of Balmerino is hardly more repugnant to justice than some other cases in the long reign of James VI. Eight years after the execution of the earl of Gowrie and his brother, one Sprot a notary, having indiscreetly mentioned that he was in possession of letters, written by a person since dead, which evinced his participation in that mysterious conspiracy, was put to death for concealing them. Thomas Ross suffered, in 1618, the punishment of treason for publishing at Oxford a blasphemous libel, as the indictment calls it, against the Scots nation.³ I know not what he could have said worse than what their sentence against him enabled others to say, that, amidst a great vaunt of Christianity and civilization, they took away men's lives by such statutes, and such constructions of them, as could only be paralleled in the annals of the worst tyrants. By an act of 1584, the privy council were empowered to examine an accused party on oath; and if he declined to answer any question, it was held denial of their jurisdiction, and amounted to a conviction of treason. This was experienced by two Jesuits,

³ The Gowrie conspiracy is well known to be one of the most difficult problems in history. Arnot has given a very good account, *Criminal Trials*, p. 20, and shown its truth, which could not reasonably be questioned, whatever motive we may assign for it. He has laid stress on Logan's letters, which appear to have been unac-

countably slighted by some writers. I have long had a suspicion, founded on these letters, that the earl of Bothwell, a darling man of desperate fortunes, was in some manner concerned in the plot, of which the earl of Gowrie and his brother were the instruments.

conduct in Scotland tends to efface those sentiments of pity and respect which other parts of his life might excite, used to assist himself on these occasions. One Mitchell having been induced, by a promise that his life should be spared, to confess an attempt to assassinate Sharp the primate, was brought to trial some years afterwards; when four lords of the council deposed on oath that no such assurance had been given him; and Sharp insisted upon his execution. The vengeance ultimately taken on this infamous apostate and persecutor, though doubtless in violation of what is justly reckoned an universal rule of morality, ought at least not to weaken our abhorrence of the man himself.

The test imposed by parliament in 1681 contained, among other things, an engagement never to attempt any alteration of government in church or state. The earl of Argyle, son of him who had perished by an unjust sentence, and himself once before attainted by another, though at that time restored by the king, was still destined to illustrate the house of Campbell by a second martyrdom. He refused to subscribe the test without the reasonable explanation that he would not bind himself from attempting, in his station, any improvement in church or state. This exposed him to an accusation of leasing-making (the old mystery of iniquity in Scots law) and of treason. He was found guilty through the astonishing audacity of the crown lawyers and servility of the judges and jury. It is not perhaps certain that his immediate execution would have ensued; but no man ever trusted securely to the mercies of the Stuarts, and Argyle escaped in disguise by the aid of his daughter-in-law. The council proposed that this lady should be publicly whipped; but there was an excess of atrocity in the Scots on the court side, which no Englishman could reach; and the duke of York felt as a gentleman upon such a suggestion. The earl of Argyle was brought to the scaffold a few years afterwards on this old sentence; but after his unfortunate rebellion, which of course would have legally justified his execution.

The Cameronians, a party rendered wild and fanatical through intolerable oppression, published a declaration, wherein, after renouncing their allegiance to Charles, and expressing their abhorrence of murder on the score of religion, they announced their determination of retaliating, according to their power, on such privy councillors, officers in command, or others, as should continue to seek their blood. The fate of Sharp was thus before the eyes of all who emulated his crimes; and in terror the council ordered, that whoever refused to disown this declaration on oath, should be put to death in the presence of two witnesses. Every officer, every soldier, was thus entrusted with the privilege of massacre; the unarmed, the women and children, fell indiscriminately by the

sword: and besides the distinct testimonies that remain of atrocious cruelty, there exists in that kingdom a deep traditional horror, the record, as it were, of that confused mass of crime and misery which has left no other memorial.

§ 14. A parliament summoned by James on his accession, with an intimation from the throne that they were assembled not only to express their own duty, but to set an example of compliance to England, gave, without the least opposition, the required proofs of loyalty. They acknowledged the king's absolute power, declared their abhorrence of any principle derogatory to it, professed an unreserved obedience in all cases, bestowed a large revenue for life. They enhanced the penalties against sectaries; a refusal to give evidence against traitors or other delinquents was made equivalent to a conviction of the same offence; it was capital to preach even in houses, or to hear preachers in the fields. The persecution raged with still greater fury in the first part of this reign. But the same repugnance of the episcopal party to the king's schemes for his own religion, which led to his remarkable change of policy in England, produced similar effects in Scotland. He had attempted to obtain from parliament a repeal of the penal laws and the test; but, though an extreme servility or a general intimidation made the nobility acquiesce in his propositions, and two of the bishops were gained over, yet the commissioners of shires and boroughs, who voting promiscuously in the house had, when united, a majority over the peers, so firmly resisted every encroachment of popery, that it was necessary to try other methods than those of parliamentary enactment. After the dissolution the dispensing power was brought into play; the privy council forbade the execution of the laws against the catholics; several of that religion were introduced to its board; the royal boroughs were deprived of their privileges, the king assuming the nomination of their chief magistrates, so as to throw the elections wholly into the hands of the crown. A declaration of indulgence, emanating from the king's absolute prerogative, relaxed the severity of the laws against presbyterian conventicles, and, annulling the oath of supremacy and the test of 1681, substituted for them an oath of allegiance, acknowledging his power to be unlimited. He promised at the same time, that "he would use no force nor invincible necessity against any man on account of his persuasion, or the protestant religion, nor would deprive the possessors of lands formerly belonging to the church." A very intelligible hint that the protestant religion was to exist only by this gracious sufferance.

§ 15. The oppressed presbyterians gained some respite by this indulgence, though instances of executions under the sanguinary statutes of the late reign are found as late as the beginning of 1688

But the memory of their sufferings was indelible; they accepted, but with no gratitude, the insidious mercy of a tyrant they abhorred. The Scots conspiracy with the prince of Orange went forward simultaneously with that of England; it included several of the council, from personal jealousy, dislike of the king's proceedings as to religion, or anxiety to secure an indemnity they had little deserved in the approaching crisis. The people rose in different parts; the Scots nobility and gentry in London presented an address to the prince of Orange, requesting him to call a convention of the estates; and this irregular summons was universally obeyed.

The king was not without friends in this convention; but the whigs had from every cause a decided preponderance. England had led the way; William was on his throne; the royal government at home was wholly dissolved; and, after enumerating in fifteen articles the breaches committed on the constitution, the estates came to a resolution—"That James VII., being a professed papist, did assume the royal power, and acted as king, without ever taking the oath required by law, and had, by the advice of evil and wicked counsellors, invaded the fundamental constitution of the kingdom, and altered it from a legal limited monarchy to an arbitrary despotic power, and hath exerted the same to the subversion of the protestant religion, and the violation of the laws and liberties of the kingdom, whereby he hath forfeited (forfeited) his right to the crown, and the throne has become vacant." It was evident that the English vote of a constructive abdication, having been partly grounded on the king's flight, could not without still greater violence be applied to Scotland; and consequently the bolder denomination of forfeiture was necessarily employed to express the penalty of his mis-government. There was, in fact, a very striking difference in the circumstances of the two kingdoms. In the one, there had been illegal acts and unjustifiable severities; but it was, at first sight, no very strong case for national resistance, which stood rather on a calculation of expediency than an instinct of self-preservation or an impulse of indignant revenge. But in the other, it had been a tyranny, dark as that of the most barbarous ages; despotism, which in England was scarcely in blossom, had borne its bitter and poisonous fruits: no word of slighter import than forfeiture could be chosen to denote the national rejection of the Stuart line.

§ 16. A declaration and claim of rights was drawn up, as in England, together with the resolution that the crown be tendered to William and Mary, and descend afterwards in conformity with the limitations enacted in the sister kingdom. This declaration excluded papists from the throne, and asserted the illegality of

proclamations to dispense with statutes, of the inflicting capital punishment without jury, of imprisonment without special cause or delay of trial, of exacting enormous fines, of nominating the magistrates in boroughs, and several other violent proceedings in the two last reigns. These articles the convention challenged as their undoubted right, against which no declaration or precedent ought to operate. They reserved some other important grievances to be redressed in parliament. Upon this occasion a noble fire of liberty shone forth to the honour of Scotland, amidst those scenes of turbulent faction or servile corruption which the annals of her parliament so perpetually display. They seemed envious of English freedom, and proud to place their own imperfect commonwealth on as firm a basis.

One great alteration in the state of Scotland was almost necessarily involved in the fall of the Stuarts. Their most conspicuous object had been the maintenance of the episcopal church; the line was drawn far more closely than in England; in that church were the court's friends, out of it were its opponents. Above all, the people were out of it, and in a revolution brought about by the people, their voice could not be slighted. It was one of the articles accordingly in the declaration of rights, that prelacy and precedence in ecclesiastical office were repugnant to the genius of a nation reformed by presbyters, and an unsupportable grievance which ought to be abolished. William, there is reason to believe, had offered to preserve the bishops, in return for their support in the convention. But this, not more happily for Scotland than for himself and his successors, they refused to give. No compromise, or even acknowledged toleration, was practicable in that country between two exasperated factions; but, if oppression was necessary, it was at least not on the majority that it ought to fall. But besides this, there was as clear a case of forfeiture in the Scots episcopal church as in the royal family of Stuart. For this institution houses had been burned and fields laid waste, and the Gospel had been preached in wildernesses, and its ministers had been shot in their prayers, and husbands had been murdered before their wives, and virgins had been defiled, and many had died by the executioner, and by massacre, and in imprisonment, and in exile and slavery, and women had been tied to stakes on the sea-shore till the tide rose to overflow them, and some had been tortured and mutilated: it was a religion of the boots and the thumb-screw, which a good man must be very cool-blooded indeed if he did not hate and reject from the hands which offered it. For, after all, it is much more certain that the Supreme Being abhors cruelty and persecution, than that he has set up bishops to have a superiority over presbyters.

The convention of estates was turned by an act of its own into a parliament, and continued to sit during the king's reign. Many excellent statutes were enacted in this parliament, besides the provisions included in the declaration of rights; twenty-six members were added to the representation of the counties, the tyrannous acts of the two last reigns were repealed, the unjust attainders were reversed, the lords of articles were abolished. After some years an act was obtained against wrongous imprisonment, still more effectual perhaps in some respects than that of the habeas corpus in England. The prisoner is to be released on bail within twenty-four hours on application to a judge, unless committed on a capital charge, and in that case must be brought to trial within sixty days. A judge refusing to give full effect to the act is declared incapable of public trust.

Notwithstanding these great improvements in the constitution, and the cessation of religious tyranny, the Scots are not accustomed to look back on the reign of William with much complacency. The regeneration was far from perfect; the court of session continued to be corrupt and partial; severe and illegal proceedings might sometimes be imputed to the council; and in one lamentable instance, the massacre of the Macdonalds in Glencoe, the deliberate crime of some statesmen tarnished not slightly the bright fame of their deceived master. The episcopal clergy, driven out injuriously by the populace from their livings, were permitted after a certain time to hold them again in some instances under certain conditions; but William, perhaps almost the only consistent friend of toleration in his kingdoms, at least among public men, lost by this indulgence the affection of one party, without in the slightest degree conciliating the other. The true cause, however, of the prevalent disaffection at this period was the condition of Scotland, an ancient, independent kingdom, inhabited by a proud, high-spirited people, relatively to another kingdom which they had long regarded with enmity, still with jealousy, but to which, in despite of their theoretical equality, they were kept in subordination by an insurmountable necessity. The union of the two crowns had withdrawn their sovereign and his court; yet their government had been national, and on the whole with no great intermixture of English influence. Many reasons, however, might be given for a more complete incorporation, which had been the favourite project of James I., and was discussed, at least on the part of Scotland, by commissioners appointed in 1670. That treaty failed of making any progress—the terms proposed being such as the English parliament would never have accepted. At the Revolution a similar plan was just hinted and abandoned. Meanwhile, the new character that the English government had assumed rendered it more difficult to preserve the actual connexion,

A king of both countries, especially by origin more allied to the weaker, might maintain some impartiality in his behaviour towards each of them. But, if they were to be ruled, in effect, nearly as two republics; that is, if the power of their parliaments should be so much enhanced as ultimately to determine the principal measures of state (which was at least the case in England), no one who saw their mutual jealousy, rising on one side to the highest exasperation, could fail to anticipate that some great revolution must be at hand, and that an union, neither federal nor legislative, but possessing every inconvenience of both, could not long be endured. The well-known business of the Darien company must have undeceived every rational man who dreamed of any alternative but incorporation or separation. The Scots parliament took care to bring on the crisis by the act of security in 1704. It was enacted that, on the queen's death without issue, the estates should meet to name a successor of the royal line, and a protestant; but that this should not be the same person who would succeed to the crown of England, unless during her majesty's reign conditions should be established to secure from English influence the honour and independence of the kingdom, the authority of parliament, the religion, trade, and liberty of the nation. This was explained to mean a free intercourse with the plantations, and the benefits of the navigation act. The prerogative of declaring peace and war was to be subjected for ever to the approbation of parliament, lest at any future time these conditions should be revoked.

§ 17. Those who obtained the act of security were partly of the Jacobite faction, who saw in it the hope of restoring at least Scotland to the banished heir—partly of a very different description, whigs in principle and determined enemies of the pretender, but attached to their country, jealous of the English court, and determined to settle a legislative union on such terms as became an independent state. Such an union was now seen in England to be indispensable; the treaty was soon afterwards begun, and, after a long discussion of the terms between the commissioners of both kingdoms, the incorporation took effect on the 1st of May, 1707. It is provided by the articles of this treaty, confirmed by the parliaments, that the succession of the united kingdom shall remain to the princess Sophia, and the heirs of her body, being protestants; that all privileges of trade shall belong equally to both nations; that there shall be one great seal, and the same coin, weights, and measures; that the episcopal and presbyterian churches of England and Scotland shall be for ever established as essential and fundamental parts of the union; that the united kingdom shall be represented by one and the same parliament, to be called the parlia-

ment of Great Britain ; that the number of peers for Scotland shall be sixteen, to be elected for every parliament by the whole body, and the number of representatives of the commons forty-five, two-thirds of whom to be chosen by the counties and one-third by the boroughs ; that the crown be restrained from creating any new peers of Scotland ; that both parts of the united kingdom shall be subject to the same duties of excise, and the same customs on export and import ; but that, when England raises two millions by a land-tax, 48,000*l.* shall be raised in Scotland, and in like proportion.

It has not been unusual for Scotsmen, even in modern times, while they cannot but acknowledge the expediency of an union and the blessings which they have reaped from it, to speak of its conditions as less favourable than their ancestors ought to have claimed. For this, however, there does not seem much reason. The ratio of population would indeed have given Scotland about one-eighth of the legislative body, instead of something less than one-twelfth ; but no government, except the merest democracy, is settled on the sole basis of numbers ; and if the comparison of wealth and of public contributions was to be admitted, it may be thought that a country, which stipulated for itself to pay less than one-fortieth of direct taxation, was not entitled to a much greater share of the representation than it obtained. Combining the two ratios of population and property, there seems little objection to this part of the union ; and in general it may be observed of the articles of that treaty, what often occurs with compacts intended to oblige future ages, that they have rather tended to throw obstacles in the way of reformation for the substantial benefit of Scotland than to protect her against encroachment and usurpation.

This, however, could not be securely anticipated in the reign of Anne ; and, no doubt, the measure was an experiment of such hazard, that every lover of his country must have consented in trembling, or revolted from it with disgust. No past experience of history was favourable to the absorption of a lesser state (at least where the government partook so much of the republican form) in one of superior power and ancient rivalry. The representation of Scotland in the united legislature was too feeble to give anything like security against the English prejudices and animosities, if they should continue or revive. The church was exposed to the most apparent perils, brought thus within the power of a legislature so frequently influenced by one which held her not as a sister, but rather as a bastard usurper of a sister's inheritance ; and, though her permanence was guaranteed by the treaty, yet it was hard to say how far the legal competence of parliament might

Tweed. It is believed that some persons in that country kept up an intercourse with Charles Edward as their sovereign till his decease in 1787. They had given, forty years before, abundant testimonies of their activity to serve him. That rebellion is, in more respects than one, disgraceful to the British government; but it furnished an opportunity for a wise measure to prevent its recurrence and to break down in some degree the aristocratical ascendancy, by abolishing the hereditary jurisdictions which, according to the genius of the feudal system, were exercised by territorial proprietors under royal charter or prescription.

CHAPTER XVIII.

ON THE CONSTITUTION OF IRELAND.

§ 1. Ancient State of Ireland. § 2. Its Kingdoms and Chieftainships. § 3. Law of Tanistry and Gavel-kind. § 4. Rude State of Society. § 5: Invasion of Henry II. Acquisitions of English Barons. § 6. Forms of English Constitution established. § 7. Exclusion of native Irish from them. § 8. Degeneracy of English Settlers. § 9. Parliament of Ireland. § 10. Disorderly State of the Island. The Irish regain Part of their Territories. § 11. English Law confined to the Pale. § 12. Poyning's Law. § 13. Royal Authority revives under Henry VIII. § 14. Resistance of Irish to Act of Supremacy. § 15. Protestant Church established by Elizabeth. § 16. Effects of this Measure. § 17. Rebellions of her Reign. § 18. Opposition in Parliament. § 19. Arbitrary proceedings of Sir Henry Sidney. § 20. James I. Laws against Catholics enforced. § 21. English Law established throughout Ireland. § 22. Settlements of English in Munster, Ulster, and other Parts. § 23. Injustices attending them. § 24. Constitution of Irish Parliament. § 25. Charles I. promises Graces to the Irish. Does not confirm them. § 26. Administration of Strafford. § 27. Rebellion of 1641. Subjugation of Irish by Cromwell. § 28. Restoration of Charles II. § 29. Act of Settlement. § 30. Hopes of Catholics under Charles and James. § 31. War of 1689, and Final Reduction of Ireland. Penal Laws against Catholics. § 32. Dependence of Irish on English Parliament. § 33. Growth of a patriotic Party in 1753.

§ 1. THE antiquities of Irish history, imperfectly recorded, and rendered more obscure by controversy, seem hardly to belong to our present subject. But the political order or state of society among that people at the period of Henry II.'s invasion must be distinctly apprehended and kept in mind before we can pass a judgment upon, or even understand, the course of succeeding events, and the policy of the English government in relation to that island.

It can hardly be necessary to mention that the Irish are descended from one of those Celtic tribes which occupied Gaul and Britain some centuries before the Christian era. Their language, however, is so far dissimilar from that spoken in Wales, though evidently of the same root, as to render it probable that the emigration, whether from this island or from Armorica, was in a remote age; while its close resemblance to that of the Scottish Highlanders, which hardly can be called another dialect, as unequivocally demonstrates a nearer affinity of the two nations. It seems to be generally believed, that the Irish are the parent tribe, and planted their colony in Scotland since the commencement of our era.

About the end of the eighth century some of those swarms of Scandinavian descent which were poured out in such unceasing and

irresistible multitudes on France and Britain began to settle on the coasts of Ireland. These colonists were known by the name of Ostmen, or men from the east, as in France they were called Normans from their northern origin. They occupied the sea-coast from Antrim easterly round to Limerick; and by them the principal cities of Ireland were built. They waged war for some time against the aboriginal Irish in the interior; but, though better acquainted with the arts of civilized life, their inferiority in numbers caused them to fail at length in this contention; and the piratical invasions from their brethren in Norway becoming less frequent in the eleventh and twelfth centuries, they had fallen into a state of dependence on the native princes.

§ 2. The island was divided into five principal kingdoms, Leinster, Munster, Ulster, Connaught, and Meath; one of whose sovereigns was chosen king of Ireland in some general meeting, probably of the nobility or smaller chieftains and of the prelates. But there seems to be no clear tradition as to the character of this national assembly, though some maintain it to have been triennially held. The monarch of the island had tributes from the inferior kings, and a certain supremacy, especially in the defence of the country against invasion; but the constitution was of a federal nature, and each was independent in ruling his people, or in making war on his neighbours. Below the kings were the chieftains of different septs or families, perhaps in one or two degrees of subordination, bearing a relation which may be loosely called feudal, to each other and to the crown.

§ 3. These chieftainships, and perhaps even the kingdoms themselves, though not partible, followed a very different rule of succession from that of primogeniture. They were subject to the law of tanistry, of which the principle is defined to be that the demesne lands and dignity of chieftainship descended to the eldest and most worthy of the same blood; these epithets not being used, we may suppose, synonymously, but in order to indicate that the preference given to seniority was to be controlled by a due regard to desert. No better mode, it is evident, of providing for a perpetual supply of those civil quarrels in which the Irish are supposed to place so much of their enjoyment could have been devised. Yet, as these grew sometimes a little too frequent, it was not unusual to elect a tanist, or reversionary successor, in the lifetime of the reigning chief, as has been the practice of more civilized nations. An infant was never allowed to hold the sceptre of an Irish kingdom, but was necessarily postponed to his uncle or other kinsman of mature age; as was the case also in England, even after the consolidation of the Anglo-Saxon monarchy.

The landowners who did not belong to the noble class bore the

same name as their chieftain, and were presumed to be of the same lineage. But they held their estates by a very different and an extraordinary tenure, that of Irish gavel-kind. On the death of a proprietor, instead of an equal partition among his children, as in the gavel-kind of English law, the chief of the sept, according to the generally received explanation, made, or was entitled to make, a fresh division of all the lands within his district; allotting to the heirs of the deceased a portion of the integral territory along with the other members of the tribe. It seems impossible to conceive that these partitions were renewed on every death of one of the sept. But they are asserted to have at least taken place so frequently as to produce a continual change of possession. The policy of this custom doubtless sprung from too jealous a solicitude as to the excessive inequality of wealth, and from the habit of looking on the tribe as one family of occupant, not wholly divested of its original right by the necessary allotment of lands to particular cultivators. It bore some degree of analogy to the institution of the year of jubilee in the Mosaic code; and, what may be thought more immediate, was almost exactly similar to the rule of succession which is laid down in the ancient laws of Wales.

§ 4. In the territories of each sept, judges called Brehons, and taken out of certain families, sat with primordial simplicity upon turfen benches in some conspicuous situation, to determine controversies. Their usages are almost wholly unknown; for what have been published as fragments of the Brehon law seem open to great suspicion of having at least been interpolated. It is notorious that, according to the custom of many states in the infancy of civilization, the Irish admitted the composition or fine for murder, instead of capital punishment; and this was divided, as in other countries, between the kindred of the slain and the judge.

In the twelfth century it is evident that the Irish nation had made far less progress in the road of improvement than any other of Europe in circumstances of climate and position so little unfavourable. They had no arts that deserve the name, nor any commerce; their best line of sea-coast being occupied by the Norwegians. They had no fortified towns, nor any houses or castles of stone; the first having been erected at Tuam a very few years before the invasion of Henry. Their conversion to Christianity, indeed, and the multitude of cathedral and conventual churches erected throughout the island, had been the cause, and probably the sole cause, of the rise of some cities or villages with that name such as Armagh, Cashel, and Trim. But neither the chiefs nor the people loved to be confined within their precincts, and chose rather to dwell in scattered cabins amidst the free solitude of bogs and mountains. As we might expect, their qualities were such as

belong to man by his original nature, and which he displays in all parts of the globe where the state of society is inartificial: they were gay, generous, hospitable, ardent in attachment and hate, credulous of falsehood, prone to anger and violence, generally crafty and cruel. With these very general attributes of a barbarous people, the Irish character was distinguished by a peculiar vivacity of imagination, an enthusiasm and impetuosity of passion, and a more than ordinary bias towards a submissive and superstitious spirit in religion.

This spirit may justly be traced in a great measure to the virtues and piety of the early preachers of the Gospel in that country. Their influence, though at this remote age, and with our imperfect knowledge, it may hardly be distinguishable amidst the licentiousness and ferocity of a rude people, was necessarily directed to counteract those vices, and cannot have failed to mitigate and compensate their evil. In the seventh and eighth centuries, while a total ignorance seemed to overspread the face of Europe, the monasteries and schools of Ireland preserved in the best manner they could such learning as had survived the revolutions of the Roman world. But the learning of monasteries had never much efficacy in dispelling the ignorance of the laity; and, indeed, even in them it had decayed long before the twelfth century. The clergy were respected and numerous, the bishops alone amounting at one time to no less than three hundred; and it has been maintained by our most learned writers that they were wholly independent of the see of Rome till, a little before the English invasion, one of their primates thought fit to solicit the pall from thence on his consecration, according to the discipline long practised in other western churches.

It will be readily perceived that the government of Ireland must have been almost entirely aristocratical, and, though not strictly feudal, not very unlike that of the feudal confederacies in France during the ninth and tenth centuries. It was perhaps still more oppressive. The ancient condition of the common people of Ireland was very little different from slavery. Unless we believe this condition to have been greatly deteriorated under the rule of their native chieftains after the English settlement, for which there seems no good reason, we must give little credit to the fanciful pictures of prosperity and happiness in that period of aboriginal independence which the Irish, in their discontent with later times, have been apt to draw. They had, no doubt, like all other nations, good and wise princes, as well as tyrants and usurpers. But we find by their annals that, out of two hundred ancient kings, of whom some brief memorials are recorded, not more than thirty came to a natural death; while, for the later period, the oppression of the Irish chieftains, and of those degenerate English who trod in their steps and emulated the vices they should have restrained, as the con-

constant theme of history. Their exactions kept the peasants in hopeless poverty, their tyranny in perpetual fear. The chief claimed a right of taking from his tenants provisions for his own use at discretion, or of sojourning in their houses. This was called *cashery*, and is somewhat analogous to the royal prerogative of *purveyance*. A still more terrible oppression was the quartering of the lords' soldiers on the people, sometimes mitigated by a composition, called by the Irish *bonaght*. For the perpetual warfare of these petty chieftains had given rise to the employment of mercenary troops, partly natives, partly from Scotland, known by the uncouth names of *Kerns* and *Gallowglasses*, who proved the scourge of Ireland down to its final subjugation by Elizabeth.

§ 5. The reduction of Ireland, at least in name, under the dominion of Henry II. was not achieved by his own efforts. He had little share in it, beyond receiving the homage of Irish princes, and granting charters to his English nobility. Strongbow, Lacy, Fitz-Stephen, were the real conquerors, through whom alone any portion of Irish territory was gained by arms or treaty; and as they began the enterprise without the king, they carried it on also for themselves, deeming their swords a better security than his charters. This ought to be kept in mind, as revealing the secret of the English government over Ireland, and furnishing a justification for what has the appearance of a negligent abandonment of its authority. The few barons, and other adventurers, who, by dint of forces hired by themselves, and, in some instances, by conventions with the Irish, settled their armed colonies in the island, thought they had done much for Henry II. in causing his name to be acknowledged, his administration to be established in Dublin, and in holding their lands by his grant. They claimed in their turn, according to the practice of all nations and the principles of equity, that these who had borne the heat of the battle should enjoy the spoil without molestation. Hence, the enormous grants of Henry and his successors, though so often censured for impolicy, were probably what they could not have retained in their own hands; and, though not perhaps absolutely stipulated as the price of titular sovereignty, were something very like it. But what is to be censured, and what at all hazards they were bound to refuse, was the violation of their faith to the Irish princes, in sharing among these insatiable barons their ancient territories; which, setting aside the wrong of the first invasion, were protected by their homage and submission, and sometimes by positive conventions. The whole island, in fact, with the exception of the county of Dublin and the maritime towns, was divided, before the end of the thirteenth century, and most of it in the twelfth, among ten English families; earl Strongbow, who had some colour of hereditary title,

belong to man by his parts of the globe where gay, generous, hospitable of falsehood, prone to a With these very general character was distinguished an enthusiasm and imp bias towards a submiss

This spirit may justify and piety of the early Their influence, though knowledge, it may harness and ferocity of a react those vices, and cast their evil. In the severance seemed to overspread schools of Ireland pre learning as had survived the learning of monasteries the ignorance of the laity long before the twelfth numerous, the bishops three hundred; and it writers that they were a little before the English fit to solicit the pall of the discipline long pract

It will be readily perceived have been almost entirely feudal, not very unlike during the ninth and oppressive. The ancient was very little different condition to have been great chieftains after the good reason, we must prosperity and happiness which the Irish, in the to draw. They had, princes, as well as the annals that, out of the memorials are recorded death; while, for chieftains, and of and emulated the

titude for the services or sense of the power of the great families had engendered, for rewarding them by excessive grants of territory, led to other concessions that rendered them almost independent of the monarchy. The franchise of a county palatine gave a right of exclusive civil and criminal jurisdiction; so that the king's writ should not run, nor his judges come within it, though judgment in its courts might be reversed by writ of error in the king's bench. The lord might enfeoff tenants to hold by knight's service of himself; he had almost all regalian rights; the lands of those attainted for treason escheated to him; he acted in everything rather as one of the great feudatories of France or Germany than a subject of the English crown. Such had been the earl of Chester, and only Chester, in England; but in Ireland this dangerous independence was permitted to Strongbow in Leinster, to Lacy in Meath, and at a later time to the Butlers and Geraldines in part of Munster. Strongbow's vast inheritance soon fell to five sisters, who took to their shares, with the same palatine rights, the counties of Carlow, Wexford, Kilkenny, Kildare, and the district of Leix, since called the Queen's County.² In all these palatinates, forming by far the greater portion of the English territories, the king's process had its course only within the lands belonging to the church. The English aristocracy of Ireland, in the thirteenth and fourteenth centuries, bears a much closer analogy to that of France in rather an earlier period than anything which the history of this island can show.

§ 7. Pressed by the inroads of these barons, and despoiled frequently of lands secured to them by grant or treaty, the native chiefs had recourse to the throne for protection, and would in all likelihood have submitted without repining to a sovereign who could have afforded it. But John and Henry III., in whose reigns the independence of the aristocracy was almost complete, though insisting by writs and proclamations on a due observance of the laws, could do little more for their new subjects, who found a better chance of redress in standing on their own defence. The powerful sept of the north enjoyed their liberty. But those of Munster and Leinster, intermixed with the English, and encroached upon from every side, were the victims of constant injustice; and abandoning the open country for bog and mountain pasture, grew more poor and barbarous in the midst of the general advance of Europe. Many remained under the yoke of English lords, and in a worse state than that of villenage, because still less protected by the tribunals of justice. The Irish had originally stipulated with Henry II. for

² William Marischal, earl of Pembroke, who married the daughter of earl Strong-

bow, left five sons and five daughters; the first all died without issue.

the use of their own laws. They were consequently held beyond the pale of English justice, and regarded as aliens at the best, sometimes as enemies, in our courts. Thus, as by the Brehon customs murder was only punished by a fine, it was not held felony to kill one of Irish race, unless he had conformed to the English law. Five septs, to which the royal families of Ireland belonged, the names of O'Neal, O'Connor, O'Brien, O'Malaehlin, and Mac Murrrough, had the special immunity of being within the protection of our law, and it was felony to kill one of them. I do not know by what means they obtained this privilege; for some of these were certainly as far from the king's obedience as any in Ireland. But besides these a vast number of charters of denization were granted to particular persons of Irish descent from the reign of Henry II. downwards, which gave them and their posterity the full birthrights of English subjects; nor does there seem to have been any difficulty in procuring these. It cannot be said, therefore, that the English government, or those who represented it in Dublin, displayed any reluctance to emancipate the Irish from thralldom. Whatever obstruction might be interposed to this was from that assembly whose concurrence was necessary to every general measure, the Anglo-Irish parliament. Thus, in 1278, we find the first instance of an application from the community of Ireland, as it is termed, but probably from some small number of septs dwelling among the colony, that they might be admitted to live by the English law, and offering 8000 marks for this favour. The letter of Edward I. to the justiciary of Ireland on this is sufficiently characteristic both of his wisdom and his rapaciousness. He is satisfied of the expediency of granting the request, provided it can be done with the general consent of the prelates and nobles of Ireland; and directs the justiciary, if he can obtain that concurrence, to agree with the petitioners for the highest fine he can obtain, and for a body of good and stout soldiers. But this necessary consent of the aristocracy was withheld. Excuses were made to evade the king's desire. It was wholly incompatible with their systematic encroachments on their Irish neighbours to give them the safeguard of the king's writ for their possessions. The Irish renewed their supplication more than once, both to Edward I. and Edward III.; they found the same readiness in the English court; they sunk at home through the same unconquerable oligarchy. It is not to be imagined that the entire Irishry partook in this desire of renouncing their ancient customs. Besides the prejudices of nationality, there was a strong inducement to preserve the Brehon laws of tanistry, which suited better a warlike tribe than the hereditary succession of England. But it was the unequivocal duty of the legislature to avail itself of every token of voluntary submission; which, though beginning only with the subject septs of Leinster.

would gradually incorporate the whole nation in a common bond of co-equal privileges with their conquerors.

§ 8. Meanwhile, these conquerors were themselves brought under a moral captivity of the most disgraceful nature; and, not as the rough soldier of Rome is said to have been subdued by the art and learning of Greece, the Anglo-Norman barons, that had wrested Ireland from the native possessors, fell into their barbarous usages, and emulated the vices of the vanquished. This degeneracy of the English settlers began very soon, and continued to increase for several ages. They intermarried with the Irish; they connected themselves with them by the national custom of fostering, which formed an artificial relationship of the strictest nature; they spoke the Irish language; they affected the Irish dress and manner of wearing the hair; they even adopted, in some instances, Irish surnames; they harassed their tenants with every Irish exaction and tyranny; they administered Irish law, if any at all; they became chieftains rather than peers; and neither regarded the king's summons to his parliaments, nor paid any obedience to his judges. Thus the great family of De Burgh or Burke, in Connaught, fell off almost entirely from subjection; nor was that of the earls of Desmond, a younger branch of the house of Geraldine or Fitzgerald, much less independent of the crown; though by the title it enjoyed, and the palatine franchises granted to it by Edward III. over the counties of Limerick and Kerry, it seemed to keep up more show of English allegiance.

§ 9. The regular constitution of Ireland was, as I have said, as nearly as possible a counterpart of that established in this country. The administration was vested in an English justiciary or lord deputy, assisted by a council of judges and principal officers, mixed with some prelates and barons, but subordinate to that of England, wherein sat the immediate advisers of the sovereign. The courts of chancery, king's bench, common pleas, and exchequer, were the same in both countries; but writs of error lay from judgments given in the second of these to the same court in England. For all momentous purposes, as to grant a subsidy, or enact a statute, it was as necessary to summon a parliament in the one island as in the other. An Irish parliament originally, like an English one, was but a more numerous council, to which the more distant as well as the neighbouring barons were summoned, whose consent, though dispensed with in ordinary acts of state, was both the pledge and the condition of their obedience to legislative provisions. Not long after 1295, the sheriff of each county and liberty is directed to return two knights to a parliament held by Wogan, an active and able deputy. The date of the admission of burgesses cannot be fixed with precision; it is probably not earlier than the reign of Edward III.

summoned many deputies from corporations to his rebel convention held at Kilkenny in the next year. The commons are mentioned as an essential part of parliament in an ordinance of 1359; before which time, in the opinion of lord Coke, "the conventions in Ireland were not so much parliaments as assemblies of great men." This, as appears, is not strictly correct; but in substance they were perhaps little else long afterwards.

The earliest statutes on record are of the year 1310; and from that year they are lost till 1429, though we know many parliaments to have been held in the mean time, and are acquainted by other means with their provisions. Those of 1310 bear witness to the degeneracy of the English lords, and to the laudable zeal of a feeble government for the reformation of their abuses. They begin with an act to restrain great lords from taking of prises, lodging, and sojourning with the people of the country against their will. The statute proceeds to restrain great lords or others, except such as have royal franchises, from giving protections, which they used to compel the people to purchase; and directs that there shall be commissions of assize and gaol delivery through all the countries of Ireland.

These regulations exhibit a picture of Irish miseries. The barbarous practices of coshering and bonaght, the latter of which was generally known in later times by the name of coyne and livery, had been borrowed from those native chieftains whom our modern Hibernians sometimes hold forth as the paternal benefactors of their country. It was the crime of the Geraldines and the De Courcys to have retrograded from the comparative humanity and justice of England, not to have deprived the people of freedom and happiness they had never known. These degenerate English, an epithet by which they are always distinguished, paid no regard to the statutes of a parliament which they had disdained to attend, and which could not render itself feared. We find many similar laws in the fifteenth century, after the interval which I have noticed in the printed records. And in the intervening period, a parliament held by Lionel duke of Clarence, second son of Edward III., at Kilkenny, in 1367, the most numerous assembly that had ever met in Ireland, was prevailed upon to pass a very severe statute against the insubordinate and degenerate colonists. It recites that the English of the realm of Ireland were become mere Irish in their language, names, apparel, and manner of living, that they had rejected the English laws, and allied themselves by intermarriage with the Irish. It prohibits under the penalties of high treason, or at least of forfeiture of lands, all these approximations to the native inhabitants, as well as the connexions of fostering and gossipred. The English are restrained from permitting the Irish to graze their lands, from presenting them

to benefices, or receiving them into religious houses, and from entertaining their bards. On the other hand, they are forbidden to make war upon their Irish neighbours without the authority of the state. And, to enforce better these provisions, the king's sheriffs are empowered to enter all franchises for the apprehension of felons or traitors.³

§ 10. This statute, like all others passed in Ireland, so far from pretending to bind the Irish, regarded them not only as out of the king's allegiance, but as perpetually hostile to his government. They were generally denominated the Irish enemy. This doubtless was not according to the policy of Henry II., nor of the English government a considerable time after his reign. Nor can it be said to be the fact, though from some confusion of times the assertion is often made, that the island was not subject, in a general sense, to that prince and to the three next kings of England. The English were settled in every province; an imperfect division of counties and administration of justice subsisted; and even the Irish chieftains, though ruling their septs by the Brehon law, do not appear in that period to have refused the acknowledgment of the king's sovereignty. But, compelled to defend their lands against perpetual aggression, they justly renounced all allegiance to a government which could not redeem the original wrong of its usurpation by the benefits of protection. They became gradually stronger; they regained part of their lost territories; and after the era of 1315, when Edward Bruce invaded the kingdom with a Scots army, and, though ultimately defeated, threw the government into a disorder from which it never recovered, their progress was so rapid that in the space of thirty or forty years the northern provinces, and even part of the southern, were entirely lost to the crown of England.

It is unnecessary in so brief a sketch to follow the unprofitable annals of Ireland in the fourteenth and fifteenth centuries. Amidst the usual variations of war, the English interests were continually losing ground. Once only Richard II. appeared with a very powerful army, and the princes of Ireland crowded round his throne to offer homage. But, upon his leaving the kingdom, they returned of course to their former independence and hostility. The long civil wars of England in the next century consummated the ruin of its power over the sister island. The Irish possessed all Ulster, and shared Connaught with the degenerate Burkes. The sept of O'Brien held

³ The statute of Kilkenny restored the English government for a while. About this time Edward III. endeavoured to supersede the domestic legislature by causing the Anglo-Irish to attend his parliament at Westminster; and succeeded

so far that, in 1375, not only prelates and peers, but proctors of the clergy, knights, and even burgesses from nine towns, actually sat there. But this was too much against the temper of the Irish to be repeated.

their own district of Thomond, now the county of Clare. A considerable part of Leinster was occupied by other independent tribes while in the south, the earls of Desmond, lords either by property or territorial jurisdiction of the counties of Kerry and Limerick, and in some measure those of Cork and Waterford, united the turbulence of English barons with the savage manners of Irish chieftains; ready to assume either character as best suited their rapacity and ambition; reckless of the king's laws or his commands, but not venturing, nor, upon the whole probably, wishing, to cast off the name of his subjects. The elder branch of their house, the earls of Kildare, and another illustrious family, the Butlers, earls of Ormond, were apparently more steady in their obedience to the crown; yet, in the great franchises of the latter, comprising the counties of Kilkenny and Tipperary, the king's writ had no course; nor did he exercise any civil or military authority but by the permission of this mighty peer.

§ 11. Thus in the reign of Henry VII., when the English authority over Ireland had reached its lowest point, it was, with the exception of a very few seaports, to all intents confined to the four counties of the English pale, a name not older perhaps than the preceding century; those of Dublin, Louth, Kildare, and Meath, the latter of which at that time included Westmeath. But even in these there were extensive marches, or frontier districts, the inhabitants of which were hardly distinguishable from the Irish, and paid them a tribute called black-rent; so that the real supremacy of the English laws was not probably established beyond the two first of these counties, from Dublin to Dundalk on the coast, and for about thirty miles inland. From this time, however, we are to date its gradual recovery. The more steady counsels and firmer prerogative of the Tudor kings left little chance of escape from their authority, either for rebellious peers of English race, or the barbarous chieftains of Ireland.

I must pause at this place to observe that we shall hardly find in the foregoing sketch of Irish history, during the period of the Plantagenet dynasty (nor am I conscious of having concealed anything essential), that systematic oppression and misrule which is every day imputed to the English nation and its government. The policy of our kings appears to have generally been wise and beneficent; but it is duly to be remembered that those very limitations of their prerogative which constitute liberty, must occasionally obstruct the execution of the best purposes; and that the co-ordinate powers of parliament, so justly our boast, may readily become the screen of private tyranny and inveterate abuse. This incapacity of doing good as well as harm has produced, comparatively speaking, little mischief in Great Britain; where

the aristocratical element of the constitution is neither so predominant, nor so much in opposition to the general interest, as it may be deemed to have been in Ireland. But it is manifestly absurd to charge the Edwards and Henrys, or those to whom their authority was delegated at Dublin, with the crimes they vainly endeavoured to chastise; much more to erect either the wild barbarians of the north, the O'Neals and O'Connors, or the degenerate houses of Burke and Fitzgerald, into patriot assertors of their country's welfare. The laws and liberties of England were the best inheritance to which Ireland could attain; the sovereignty of the English crown her only shield against native or foreign tyranny. It was her calamity that these advantages were long withheld; but the blame can never fall upon the government of this island.

§ 12. In the contest between the houses of York and Lancaster, most of the English colony in Ireland had attached themselves to the fortunes of the White Rose; they even espoused the two pretenders, who put in jeopardy the crown of Henry VII.; and thus became of course obnoxious to his jealousy, though he was politic enough to forgive in appearance their disaffection. But as Ireland had for a considerable time rather served the purposes of rebellious invaders than of the English monarchy, it was necessary to make her subjection, at least so far as the settlers of the pale were concerned, more than a word. This produced the famous statute of Drogheda, in 1495, known by the name of *Poyning's Law*, from the lord deputy through whose vigour and prudence it was enacted. It contains a variety of provisions to restrain the lawlessness of the Anglo-Irish within the pale (for to no others could it immediately extend), and to confirm the royal sovereignty. All private hostilities without the deputy's licence were declared illegal; but to excite the Irish to war was made high treason. Murders were to be prosecuted according to law, and not in the manner of the natives, by pillaging, or exacting a fine from the sept of the slayer. The citizens or freemen of towns were prohibited from receiving wages or becoming retainers of lords and gentlemen; and, to prevent the ascendancy of the latter class, none who had not served apprenticeships were to be admitted as aldermen or freemen of corporations. The requisitions of coyne and livery, which had subsisted in spite of the statutes of Kilkenny, were again forbidden, and those statutes were renewed and confirmed. The principal officers of state and the judges were to hold their patents during pleasure, "because of the great inconveniences that had followed from their being for term of life, to the king's grievous displeasure." A still more important provision, in its permanent consequence, was made, by enacting that all statutes lately made in England be deemed good and effectual in Ireland.

It has been remarked that the same had been done by an Irish act of Edward IV. Some question might also be made, whether the word "lately" was not intended to limit this acceptance of English law. But in effect this enactment has made an epoch in Irish jurisprudence; all statutes made in England prior to the eighteenth year of Henry VII. being held equally valid in Ireland, while none of later date have any operation, unless specially adopted by its parliament; so that the law of the two countries has begun to diverge from that time, and after three centuries has been in several respects differently modified.

But even these articles of Poyning's law are less momentous than one by which it is peculiarly known. It is enacted that no parliament shall in future be holden in Ireland till the king's lieutenant shall certify to the king, under the great seal, the causes and considerations, and all such acts as it seems to them ought to be passed thereon, and such be affirmed by the king and his council, and his licence to hold a parliament be obtained. Any parliament holden contrary to this form and provision should be deemed void. Thus by securing the initiative power to the English council, a bridle was placed in the mouths of every Irish parliament. It is probable also that it was designed as a check on the lord-deputies, sometimes powerful Irish nobles, whom it was dangerous not to employ, but still more dangerous to trust. Whatever might be its motives, it proved in course of time the great means of preserving the subordination of an island, which, from the similarity of constitution, and the high spirit of its inhabitants, was constantly panting for an independence which her more powerful neighbour neither desired nor dared to concede.

§ 13. No subjects of the crown in Ireland enjoyed such influence at this time as the earls of Kildare, whose possessions lying chiefly within the pale, they did not affect an ostensible independence, but generally kept in their hands the chief authority of government, though it was the policy of the English court, in its state of weakness, to balance them in some measure by the rival family of Butler. But the self-confidence with which this exaltation inspired the chief of the former house laid him open to the vengeance of Henry VIII.; he affected, while lord-deputy, to be surrounded by Irish lords, to assume their wild manners, and to intermarry his daughters with their race. The councillors of English birth or origin dreaded this suspicious approximation to their hereditary enemies; and Kildare, on their complaint, was compelled to obey his sovereign's order by repairing to London. He was committed to the Tower: on a premature report that he had suffered death, his son, a young man to whom he had delegated the administration, took up arms under the rash impulse of resentment; the primate

former instance, many of his subjects, and even his clergy, were secretly attached to the principles of the Reformation; as many others were jealous of ecclesiastical wealth, or eager to possess it. But in Ireland the reformers had made no progress; it had been among the effects of the pernicious separation of the two races, that the Irish priests had little intercourse with their bishops, who were nominated by the king, so that their synods are commonly recited to have been holden *inter Anglicos*; the bishops themselves were sometimes intruded by violence, more often dispossessed by it; a total ignorance and neglect prevailed in the church; and it is even found impossible to recover the succession of names in some sees. In a nation so ill predisposed, it was difficult to bring about a compliance with the king's demand of abjuring their religion; ignorant, but not indifferent, the clergy, with Cromer the primate at their head, and most of the lords and commons, in a parliament held at Dublin in 1536, resisted the act of supremacy; which was nevertheless ultimately carried by the force of government. Its enemies continued to withstand the new schemes of reformation, more especially in the next reign, when they went altogether to subvert the ancient faith. As it appeared dangerous to summon a parliament, the English liturgy was ordered by a royal proclamation; but Dowdall, the new primate, as stubborn an adherent of the Romish church as his predecessor, with most of the other bishops and clergy, refused obedience; and the Reformation was never legally established in the short reign of Edward. His eldest sister's accession reversed of course what had been done, and restored tranquillity in ecclesiastical matters; for the protestants were too few to be worth persecution, nor were even those molested who fled to Ireland from the fires of Smithfield.

§ 15. Another scene of revolution ensued a few years. Elizabeth, having fixed the protestant religion as the basis in England, sent over the earl of Sussex to Ireland in 1560. The disunion, such an as hostile to the protestant religion; occurred on this occasion, and the protestants were uniformly for the large number said to have been converted by conformity to the catholic religion; the house of commons consisted of ten only out of twenty; received the protestant representative; many of the lords containing a large number of supremacy,

national faith, that it should even obtain a legitimate indulgence for its own mode of worship, was abominable before God, and incompatible with the sovereign authority.

§ 16. This sort of reasoning, half bigotry, half despotism, was nowhere so preposterously displayed as in Ireland. The numerical majority is not always to be ascertained with certainty; and some regard may fairly, or rather necessarily, be had to rank, to knowledge, to concentration. But in that island the disciples of the Reformation were in the most inconsiderable proportion among the Anglo-Irish colony, as well as among the natives; their church was a government without subjects, a college of shepherds without sheep. I am persuaded that this was not intended nor expected to be a permanent condition; but such were the difficulties which the state of that unhappy nation presented, or such the negligence of its rulers, that scarce any pains were taken in the age of Elizabeth, nor indeed in subsequent ages, to win the people's conviction, or to eradicate their superstitions, except by penal statutes and the sword. The Irish language was universally spoken without the pale; it had even made great progress within it; the clergy were principally of that nation; yet no translation of the Scriptures, the chief means through which the Reformation had been effected in England and Germany, nor even of the regular liturgy, was made into that tongue; nor was it possible, perhaps, that any popular instruction should be carried far in Elizabeth's reign, either by public authority or by the ministrations of the reformed clergy. Yet neither among the Welsh nor the Scots Highlanders, though Celtic tribes, and not much better in civility of life at that time than the Irish, was the ancient religion long able to withstand the sedulous preachers of reformation.

§ 17. It is evident from the history of Elizabeth's reign that the forcible dispossession of the catholic clergy, and their consequent activity in deluding a people too open at all times to their counsels, aggravated the rebellious spirit of the Irish, and rendered their obedience to the law more unattainable. But, even independently of this motive, the Desmonds and Tyrones would have tried, as they did, the chances of insurrection, rather than abdicate their unlicensed but ancient chieftainship. It must be admitted that, if they were faithless in promises of loyalty, the crown's representatives in Ireland set no good example; and when they saw the spoliations of property by violence or pretext of law, the sudden executions on alleged treasons, the breaches of treaty, sometimes even the assassinations, by which a despotic policy went onward in its work of subjugation, they did but play the usual game of barbarians in opposing craft and perfidy, rather more gross perhaps and notorious, to the same engines of a dissembling government.

Yet if we can put any trust in our own testimonies, the great families wore, by mismanagement and dissension, the curse of their vassals. Sir Henry Sidney represents to the queen, in 1567, the wretched condition of the southern and western counties in the vast territories of the earls of Ormond, Desmond, and Clancarde. "An unmeasurable tract," he says, "is now waste and uninhabited, which of late years was well tilled and pastured." "A more pleasant nor a more desolate land I never saw than from Youghall to Limerick." "So far hath that policy, or rather lack of policy, in keeping dissension among them prevailed, as now, albeit all that are alive would become honest and live in quiet, yet are there not left alive in those two provinces the twentieth person necessary to inhabit the same." Yet this was but the first scene of calamity. After the rebellion of the last earl of Desmond, the counties of Cork and Kerry, his ample patrimony, were so wasted by war and military executions, and famine and pestilence, that, according to a contemporary writer, who expresses the truth with hyperbolical energy, "the land itself, which before those wars was populous, well inhabited, and rich in all the good blessings of God, being plenteous of corn, full of cattle, well stored with fruit and sundry other good commodities, is now become waste and barren, yielding no fruits, the pastures no cattle, the fields no corn, the air no birds, the seas, though full of fish, yet to them yielding nothing. Finally, every way the curse of God was so great, and the lands so barren both of man and beast, that whosoever did travel from the one end unto the other of all Munster, even from Waterford to the head of Limerick, which is about six-score miles, he should not meet any man, woman, or child, saving in towns and cities; nor yet see any beast but the very wolves, the foxes, and other like ravening beasts."⁵ The severity of sir Arthur Grey, at this time deputy, was such that Elizabeth was assured he had left little for her to reign over but ashes and carcasses; and, though not by any means of too indulgent a nature, she was induced to recall him.⁶ His successor, sir John Perrott, who held the viceroyalty only from 1584 to 1587, was distinguished for a sense of humanity and justice, together with an active zeal for the enforcement of law. Perrott, the best of Irish governors, soon fell a sacrifice to a court intrigue and the queen's jealousy; and the remainder of her reign was occupied with almost unceasing revolts of the earl of Tyrone, head of the great sect of O'Neil in Ulster, instigated by Rome and Spain,

⁵ Hollingshed, 460.

⁶ Spenser's Account of Ireland, p. 430 (vol. viii. of Todd's edition, 1805). Grey is the Arthegal of the Faery Queen, the

representative of the virtue of justice in that allegory, attended by Talus with his iron staff, which indeed was unsparingly employed to crush rebellion.

and endangering, far more than any preceding rebellion, her sovereignty over Ireland.

§ 18 The old English of the pale were little more disposed to embrace the reformed religion, or to acknowledge the despotic principles of a Tudor administration, than the Irish themselves; and though they did not join the rebellions of those they so much hated, the queen's deputies had sometimes to encounter a more legal resistance. A new race of colonists had begun to appear in their train, eager for possessions, and for the rewards of the crown, contemptuous of the natives, whether aboriginal or of English descent, and in consequence the objects of their aversion or jealousy. Hence in a parliament summoned by sir Henry Sidney in 1569, the first after that which had reluctantly established the protestant church, a strong country party, as it may be termed, was formed in opposition to the crown. They complained with much justice of the management by which irregular returns of members had been made; some from towns not incorporated, and which had never possessed the elective right; some self-chosen sheriffs and magistrates; some mere English strangers, returned for places which they had never seen. The judges, on reference to their opinion, declared the elections illegal in the two former cases; but confirmed the non-resident burgesses, which still left a majority for the court.

The Irish patriots, after this preliminary discussion, opposed a new tax upon wines and a bill for the suspension of Poyning's law. The duty on wines, laid aside for the time, was carried in a subsequent session in the same year; and several other statutes were enacted, which, as they did not affect the pale, may possibly have encountered no opposition.

§ 19. In sir Henry Sidney's second government, which began in 1576, the pale was excited to a more strenuous resistance by an attempt to subvert their liberties. It had long been usual to obtain a sum of money for the maintenance of the household and of the troops by an assessment settled between the council and principal inhabitants of each district. This, it was contended by the government, was instead of the contribution of victuals which the queen, by her prerogative of purveyance, might claim at a fixed rate, much lower than the current price. It was maintained on the other side to be a voluntary benevolence. Sidney now devised a plan to change it for a cess or permanent composition for every plough-land, without regard to those which claimed exemption from the burden of purveyance; and imposed this new tax by order of council, as sufficiently warrantable by the royal prerogative. The landowners of the pale remonstrated against such a violation of their franchises, and were met by the usual arguments. They appealed to the text of the laws; the deputy replied by precedents against law. These

irregularities did not satisfy the genius of the queen, who was not in compliance with the demand, and still alleged that it was contrary both to reason and law to impose any charge upon them without parliament or grand council. A deputation was sent to England in the name of all the subjects of the English pale. Sidney was not backward in representing their behaviour as the effect of disaffection; nor was Elizabeth likely to resolve where both her authority and her revenue were apparently concerned. But, after some demonstrations of resentment in committing the delegates to the Tower, she took alarm at the clamours of their countrymen; and, aware that the king of Spain was ready to throw troops into Ireland, desisted with that prudence which always kept her steady in command, accepting a voluntary composition for seven years in the accustomed manner.

§ 20. James I. ascended the throne with as great advantages in Ireland as in his other kingdoms. That island was already purified by the submission of Tyrone; and all was prepared for a firm establishment of the English power upon the basis of order, law, and civilized customs; a reformation which in some respects the king was not ill fitted to introduce. His reign is perhaps on the whole the most important in the constitutional history of Ireland, and that from which the present scheme of society in that country is chiefly to be deduced.

1. The laws of supremacy and uniformity, copied from those of England, were incompatible with any exercise of the Roman catholic worship, or with the admission of any members of that church into civil trust. It appears indeed that they were by no means strictly executed during the queen's reign; yet the priests were of course excluded, so far as the English authority prevailed, from their churches and benefices; the former were chiefly ruined; the latter fell to protestant strangers or to conforming ministers of native birth, dissolute and ignorant, as careless to teach as the people were pre-determined not to listen.⁷ The priests, many of them, engaged in a conspiracy with the court of Spain against the queen and her successor, and, all deeming themselves unjustly and sacrilegiously despoiled, kept up the spirit of disaffection, or at least of resistance to religious innovation, throughout the kingdom. The accession of James seemed a sort of signal for casting off the yoke of heresy; in Cork, Waterford, and other cities, the people, not without consent of the magistrates, rose to restore the catholic worship; they seized the churches, ejected the ministers, marched in public processions, and shut their gates against the lord deputy. He soon reduced

⁷ Spenser gives a bad character of the protestant clergy. It was chiefly on this account that the university of Dublin was founded in 1591. *Ireland*, 3. 212,

and endangering, far more than any preceding rebellion, her sovereignty over Ireland.

§ 18 The old English of the pale were little more disposed to embrace the reformed religion, or to acknowledge the despotic principles of a Tudor administration, than the Irish themselves; and though they did not join the rebellions of those they so much hated, the queen's deputies had sometimes to encounter a more legal resistance. A new race of colonists had begun to appear in their train, eager for possessions, and for the rewards of the crown, contemptuous of the natives, whether aboriginal or of English descent, and in consequence the objects of their aversion or jealousy. Hence in a parliament summoned by sir Henry Sidney in 1569, the first after that which had reluctantly established the protestant church, a strong country party, as it may be termed, was formed in opposition to the crown. They complained with much justice of the management by which irregular returns of members had been made; some from towns not incorporated, and which had never possessed the elective right; some self-chosen sheriffs and magistrates; some mere English strangers, returned for places which they had never seen. The judges, on reference to their opinion, declared the elections illegal in the two former cases; but confirmed the non-resident burgesses, which still left a majority for the court.

The Irish patriots, after this preliminary discussion, opposed a new tax upon wines and a bill for the suspension of Poyning's law. The duty on wines, laid aside for the time, was carried in a subsequent session in the same year; and several other statutes were enacted, which, as they did not affect the pale, may possibly have encountered no opposition.

§ 19. In sir Henry Sidney's second government, which began in 1576, the pale was excited to a more strenuous resistance by an attempt to subvert their liberties. It had long been usual to obtain a sum of money for the maintenance of the household and of the troops by an assessment settled between the council and principal inhabitants of each district. This, it was contended by the government, was instead of the contribution of victuals which the queen, by her prerogative of purveyance, might claim at a fixed rate, much lower than the current price. It was maintained on the other side to be a voluntary benevolence. Sidney now devised a plan to change it for a cess or permanent composition for every plough-land, without regard to those which claimed exemption from the burden of purveyance; and imposed this new tax by order of council, as sufficiently warrantable by the royal prerogative. The landowners of the pale remonstrated against such a violation of their franchises, and were met by the usual arguments. They appealed to the text of the laws; the deputy replied by precedents against law. These

irregularities did not satisfy the gentry of the pale, who refused compliance with the demand, and still alleged that it was contrary both to reason and law to impose any charge upon them without parliament or grand council. A deputation was sent to England in the name of all the subjects of the English pale. Sidney was not backward in representing their behaviour as the effect of disaffection; nor was Elizabeth likely to recede where both her authority and her revenue were apparently concerned. But, after some demonstrations of resentment in committing the delegates to the Tower, she took alarm at the clamours of their countrymen; and, aware that the king of Spain was ready to throw troops into Ireland, desisted with that prudence which always kept her passion in command, accepting a voluntary composition for seven years in the accustomed manner.

§ 20. James I. ascended the throne with as great advantages in Ireland as in his other kingdoms. That island was already pacified by the submission of Tyrone; and all was prepared for a final establishment of the English power upon the basis of equal laws and civilized customs; a reformation which in some respects the king was not ill fitted to introduce. His reign is perhaps on the whole the most important in the constitutional history of Ireland, and that from which the present scheme of society in that country is chiefly to be deduced.

1. The laws of supremacy and uniformity, copied from those of England, were incompatible with any exercise of the Roman catholic worship, or with the admission of any members of that church into civil trust. It appears indeed that they were by no means strictly executed during the queen's reign; yet the priests were of course excluded, so far as the English authority prevailed, from their churches and benefices; the former were chiefly ruined; the latter fell to protestant strangers or to conforming ministers of native birth, dissolute and ignorant, as careless to teach as the people were pre-determined not to listen.⁷ The priests, many of them, engaged in a conspiracy with the court of Spain against the queen and her successor, and, all deeming themselves unjustly and sacrilegiously despoiled, kept up the spirit of disaffection, or at least of resistance to religious innovation, throughout the kingdom. The accession of James seemed a sort of signal for casting off the yoke of heresy; in Cork, Waterford, and other cities, the people, not without consent of the magistrates, rose to restore the catholic worship; they seized the churches, ejected the ministers, marched in public processions, and shut their gates against the lord deputy. He soon reduced

⁷ Spenser gives a bad character of the protestant clergy. It was chiefly on this account that the university of Dublin was founded in 1591. Leland, ii. 319,

them to obedience; but almost the whole nation was of the same faith, and disposed to struggle for a public toleration. This was beyond every question their natural right, and as certainly was it the best policy of England to have granted it; but the king-craft and the priest-craft of the day taught other lessons. Priests were ordered by proclamation to quit the realm; the magistrates and chief citizens of Dublin were committed to prison for refusing to frequent the protestant church. The gentry of the pale remonstrated at the court of Westminster; and, though their delegates atoned for their self-devoted courage by imprisonment, the secret menace of excommunication seems to have produced, as usual, some effect, in a direction to the lord deputy that he should endeavour to conciliate the recusants by instruction. These penalties of recusancy, from whatever cause, were very little enforced, but the catholics murmured at the oath of supremacy, which shut them out from every distinction: though here again the execution of the law was sometimes mitigated, they justly thought themselves humiliated, and the liberties of their country endangered, by standing thus at the mercy of the crown. And it is plain that even within the pale the compulsory statutes were at least far better enforced than under the queen; while in those provinces within which the law now first began to have its course, the difference was still more acutely perceived.

§ 21.—2. The first care of the new administration was to perfect the reduction of Ireland into a civilized kingdom. Sheriffs were appointed throughout Ulster; the territorial divisions of counties and baronies were extended to the few districts that still wanted them; the judges of assize went their circuits everywhere; the customs of tanistry and gavel-kind were determined by the court of king's bench to be void; the Irish lords surrendered their estates to the crown, and received them back by the English tenures of knight-service or soccage; an exact account was taken of the lands each of these chieftains possessed, that he might be invested with none but those he occupied; while his tenants, exempted from those uncertain Irish exactions, the source of their servitude and misery, were obliged only to an annual quit-rent, and held their own lands by a free tenure. The king's writ was obeyed, at least in profession, throughout Ireland; after four centuries of lawlessness and misgovernment a golden period was anticipated by the English courtiers, nor can we hesitate to recognise the influence of enlightened, and sometimes of benevolent minds, in the scheme of government now carried into effect. But two unhappy maxims debased their motives, and discredited their policy; the first, that none but the true religion, or the state's religion, could be suffered to exist in the eye of the law; the second, that no pretext could be too harsh or

iniquitous to exclude men of a different race or erroneous faith from their possessions.

§ 22.—3. The suppression of Slanes O'Neil's revolt in 1567 seems to have suggested the thought, or afforded the means, of perfecting the conquest of Ireland by the same methods that had been used to commence it, an extensive plantation of English colonists. The law of forfeiture came in very conveniently to further this great scheme of policy. O'Neil was attainted in the parliament of 1569; the territories which acknowledged him as chieftain, comprising a large part of Down and Antrim, were vested in the crown; and a natural son of sir Thomas Smith, secretary of state, who is said to have projected this settlement, was sent with a body of English to take possession of the lands thus presumed in law to be vacant. This expedition however failed of success; the native occupants not acquiescing in this doctrine of our lawyers. But fresh adventurers settled in different parts of Ireland; and particularly after the earl of Desmond's rebellion in 1583, whose forfeiture was reckoned at 574,628 Irish acres, though it seems probable that this is more than double the actual confiscation. These lands in the counties of Cork and Kerry, left almost desolate by the oppression of the Geraldines themselves, and the far greater cruelty of the government in subduing them, were parcelled out among English undertakers at low rents, but on condition of planting eighty-six families on an estate of 12,000 acres, and in like proportion for smaller possessions. None of the native Irish were to be admitted as tenants; but neither this nor the other conditions were strictly observed by the undertakers, and the colony suffered alike by their rapacity and their neglect. The oldest of the second race of English families in Ireland are found among the descendants of these Munster colonists. We find among them also some distinguished names that have left no memorial in their posterity; sir Walter Raleigh, who here laid the foundation of his transitory success, and one not less in glory, and hardly less in misfortune, Edmund Spenser. In a country house once belonging to the Desmonds on the banks of the Mulla near Doneraile, the first three books of the 'Faery Queen' were written; and here too the poet awoke to the sad realities of life, and has left us, in his 'Account of the State of Ireland,' the most full and authentic document that illustrates its condition. This treatise abounds with judicious observations; but we regret the disposition to recommend an extreme severity in dealing with the native Irish, which ill becomes the sweetness of his muse.

The two great native chieftains of the north, the earls of Tyrone and Tyrconnel, a few years after the king's accession, engaged, or were charged with having engaged, in some new conspiracy, and

flying from justice were attainted of treason. Five hundred thousand acres in Ulster were thus forfeited to the crown; and on this was laid the foundation of that great colony which has rendered that province, from being the seat of the wildest natives, the most flourishing, the most protestant, and the most enlightened part of Ireland. This plantation, though projected no doubt by the king and by lord Bacon, was chiefly carried into effect by the lord deputy, sir Arthur Chichester, a man of great capacity, judgment, and prudence. He caused surveys to be taken of the several counties, fixed upon proper places for building castles or founding towns, and advised that the lands should be assigned, partly to English or Scots undertakers, partly to servitors of the crown, as they were called, men who had possessed civil or military offices in Ireland, partly to the old Irish, even some of those who had been concerned in Tyrone's rebellion. These and their tenants were exempted from the oath of supremacy imposed on the new planters. From a sense of the error committed in the queen's time by granting vast tracts to single persons, the lands were distributed in three classes, of 2000, 1500, and 1000 English acres; and in every county one-half of the assignments was to the smallest, the rest to the other two classes. Those who received 2000 acres were bound within four years to build a castle and bawn, or strong court-yard; the second class within two years to build a stone or brick house with a bawn; the third class a bawn only. The first were to plant on their lands within three years forty-eight able men, eighteen years old or upwards, born in England or the inland parts of Scotland; the others to do the same in proportion to their estates. All the grantees were to reside within five years, in person or by approved agents, and to keep sufficient store of arms; they were not to alienate their lands without the king's licence, nor to let them for less than twenty-one years; their tenants were to live in houses built in the English manner, and not dispersed, but in villages. The natives held their lands by the same conditions, except that of building fortified houses; but they were bound to take no Irish exactions from their tenants, nor to suffer the practice of wandering with their cattle from place to place. In this manner were these escheated lands of Ulster divided among a hundred and four English and Scots undertakers, fifty-six servitors, and two hundred and eighty-six natives. All lands which through the late anarchy and change of religion had been lost to the church were restored; and some further provision was made for the beneficed clergy. Chichester, as was just, received an allotment in a far ampler measure than the common servants of the crown.

§ 23. This noble design was not altogether completed according to the platform. The native Irish, to whom some regard was shown

by these regulations, were less equitably dealt with by the colonists, and by those other adventurers whom England continually sent forth to enrich themselves and maintain her sovereignty. Pretexts were sought to establish the crown's title over the possessions of the Irish; they were assailed through a law which they had but just adopted, and of which they knew nothing, by the claims of a litigious and encroaching prerogative, against which no prescription could avail, nor any plea of fairness and equity obtain favour in the sight of English-born judges. Thus, in the King's and Queen's counties, and in those of Leitrim, Longford, and Westmeath, 385,000 acres were adjudged to the crown, and 66,000 in that of Wicklow. The greater part was indeed regranted to the native owners on a permanent tenure; and some apology might be found for this harsh act of power in the means it gave of civilising those central regions, always the shelter of rebels and robbers; yet this did not take off the sense of forcible spoliation which every foreign tyranny renders so intolerable. Surrouders were extorted by menaces; juries refusing to find the crown's title were fined by the council; many were dispossessed without any compensation, and sometimes by gross perjury, sometimes by barbarous cruelty. It is said that in the county of Longford the Irish had scarcely one-third of their former possessions assigned to them, out of three-fourths which had been intended by the king. Those who had been most faithful, those even who had conformed to the protestant church, were little better treated than the rest. Hence, though in many new plantations great signs of improvement were perceptible, though trade and tillage increased, and towns were built, a secret rankling for those injuries was at the heart of Ireland; and in these two leading grievances, the penal laws against recusants, and the inquisition into defective titles, we trace, beyond a shadow of doubt, the primary source of the rebellion in 1641.

§ 24.—4. Before the reign of James, Ireland had been regarded either as a conquered country or as a mere colony of English, according to the persons or the provinces which were in question. The whole island now took a common character, that of a subordinate kingdom, inseparable from the English crown, and dependent also, at least as was taken for granted by our lawyers, on the English legislature; but governed after the model of our constitution, by nearly the same laws, and claiming entirely the same liberties. It was a natural consequence that an Irish parliament should represent, or affect to represent, every part of the kingdom. None of Irish blood had ever sat, either lords or commoners, till near the end of Henry VIII.'s reign. The representation of the twelve counties into which Munster and part of Leinster were divided and of a few towns, which existed in the reign of Edward III., if

not later, was reduced by the defection of so many English families to the limits of the four shires of the pale. The old counties, when they returned to their allegiance under Henry VIII., and those afterwards formed by Mary and Elizabeth, increased the number of the commons; though in that of 1567, as has been mentioned, the writs for some of them were arbitrarily withheld. The two queens did not neglect to create new boroughs, in order to balance the more independent representatives of the old Anglo-Irish families by the English retainers of the court. Yet it is said that in seventeen counties out of thirty-two into which Ireland was finally parcelled, there was no town that returned burgesses to parliament before the reign of James I., and the whole number in the rest was but about thirty. He created at once forty new boroughs, or possibly rather more; for the number of the commons, in 1613, appears to have been 232. It was several times afterwards augmented, and reached its complement of 300 in 1692. These grants of the elective franchise were made, not indeed improvidently, but with very sinister intents towards the freedom of parliament; two-thirds of an Irish house of commons, as it stood in the eighteenth century, being returned with the mere farce of election by wretched tenants of the aristocracy.

§-25. The province of Connaught, with the adjoining county of Clare, was still free from the intrusion of English colonists. The Irish had complied, both under Elizabeth and James, with the usual conditions of surrendering their estates to the crown in order to receive them back by a legal tenure. But, as these grants, by some negligence, had not been duly enrolled in chancery (though the proprietors had paid large fees for that security), the council were not ashamed to suggest, or the king to adopt, an iniquitous scheme of declaring the whole country forfeited, in order to form another plantation as extensive as that of Ulster. The remonstrances of those whom such a project threatened put a present stop to it; and Charles, on ascending the throne, found it better to hear the proposals of his Irish subjects for a composition. After some time it was agreed between the court and the Irish agents in London, that the kingdom should voluntarily contribute 120,000*l.* in three years by equal payments, in return for certain graces, as they were called, which the king was to bestow. These went to secure the subject's title to his lands against the crown after sixty years' possession, and gave the people of Connaught leave to enrol their grants, relieving also the settlers in Ulster or other places from the penalties they had incurred by similar neglect. The abuses of the council-chamber in meddling with private causes, the oppression of the court of wards, the encroachments of military authority, and excesses of the soldiers were restrained. A free trade with the king's

dominions or those of friendly powers was admitted. The recusants were allowed to sue for livery of their estates in the court of wards, and to practise in courts of law, on taking an oath of mere allegiance instead of that of supremacy. Unlawful exactions and severities of the clergy were prohibited. These reformations of unquestionable and intolerable evils, as beneficial as those contained nearly at the same moment in the Petition of Right, would have saved Ireland long ages of calamity, if they had been as faithfully completed as they seemed to be graciously conceded. But Charles I. cumulated on this occasion the most perfidious tyrants. It had been promised by an article in these graces that a parliament should be held to confirm them. Writs of summons were accordingly issued by the lord deputy; but with no consideration of that fundamental rule established by Poyning's law, that no parliament should be held in Ireland until the king's licence be obtained. This irregularity was of course discovered in England, and the writs of summons declared to be void. It would have been easy to remedy this mistake, if such it were, by proceeding in the regular course with a royal licence. But this was withheld; no parliament was called for a considerable time; and, when the three years had elapsed during which the voluntary contribution had been payable, the king threatened to straiten his graces if it were not renewed.

§ 26. He had now placed in the viceroyalty of Ireland that star of exceeding brightness, but sinister influence, the willing and able instrument of despotic power, lord Strafford. In his eyes the country he governed belonged to the crown by right of conquest; neither the original natives, nor even the descendants of the conquerors themselves, possessing any privileges which could interfere with its sovereignty. He found two parties extremely jealous of each other, yet each loth to recognise an absolute prerogative, and thus in some measure having a common cause. The protestants, not a little from bigotry, but far more from a persuasion that they held their estates on the tenure of a rigid religious monopoly, could not endure to hear of a toleration of popery, which, though originally demanded, was not even mentioned in the king's graces; and disapproved the indulgence shown by those graces to recusants, which is said to have been followed by an impolitic ostentation of the Romish worship. They objected to a renewal of the contribution, both as the price of this dangerous tolerance of recusancy and as debarring the protestant subjects of their constitutional right to grant money only in parliament. Wentworth, however, insisted upon its payment for another year, at the expiration of which a parliament was to be called.

The king did not come without reluctance into this last measure, hating, as he did, the very name of parliament; but the lord deputy

confided in his own energy to make it innocuous and serviceable. They conspired together how to extort the most from Ireland, and concede the least; Charles, in truth, showing a most selfish indifference to anything but his own revenue and a most dishonourable unfaithfulness to his word. The parliament met in 1634, with a strong desire of insisting on the confirmation of the graces they had already paid for; but Wentworth had so balanced the protestant and recusant parties, employed so skilfully the resources of fair promises and intimidation, that he procured six subsidies to be granted before a prorogation, without any mutual concession from the crown. It had been agreed that a second session should be held for confirming the graces; but in this, as might be expected, the supplies having been provided, the request of both houses that they might receive the stipulated reward met with a cold reception; and ultimately the most essential articles, those establishing a sixty years' prescription against the crown, and securing the titles of proprietors in Clare and Connaught, as well as those which relieved the catholics in the court of wards from the oath of supremacy, were laid aside. Statutes, on the other hand, were borrowed from England, especially that of uses, which cut off the methods they had hitherto employed for evading the law's severity.

Strafford had always determined to execute the project of the late reign with respect to the western counties. He proceeded to hold an inquisition in each county of Connaught, and summoned juries in order to preserve a mockery of justice in the midst of tyranny. They were required to find the king's title to all the lands, on such evidence as could be found and was thought fit to be laid before them; and were told that what would be best for their own interest would be to return such a verdict as the king desired; what would be best for his, to do the contrary; since he was able to establish it without their consent, and wished only to invest them graciously with a large part of what they now unlawfully withheld from him. These menaces had their effect in all counties except that of Galway, where a jury stood out obstinately against the crown, and being in consequence, as well as the sheriff, summoned to the castle in Dublin, were sentenced to an enormous fine. Yet the remonstrances of the western proprietors were so clamorous that no steps were immediately taken for carrying into effect the designed plantation; and the great revolutions of Scotland and England which soon ensued gave another occupation to the mind of lord Strafford. It has never been disputed that a more uniform administration of justice in ordinary cases, a stricter coercion of outrage, a more extensive commerce, evidenced by the augmentation of customs, above all, the foundation of the great linen manufacture in Ulster, distinguished the period of his govern-

ment. But it is equally manifest that neither the reconciliation of parties, nor their affection to the English crown, could be the result of his arbitrary domination; and that, having healed no wound he found, he left others to break out after his removal. The despotic violence of this minister towards private persons, and those of great eminence, is in some instances well known by the proceedings on his impeachment, and in others is sufficiently familiar by our historical and biographical literature. It is indeed remarkable that we find among the objects of his oppression and insult all that most illustrates the contemporary annals of Ireland, the venerable learning of Usher, the pious integrity of Bedell, the experienced wisdom of Cork, and the early virtue of Clanricarde.

The parliament assembled by Strafford in 1640 began with loud professions of gratitude to the king for the excellent governor he had appointed over them; they voted subsidies to pay a large army raised to serve against the Scots, and seemed eager to give every manifestation of zealous loyalty. But after their prorogation, and during the summer of that year, as rapid a tendency to a great revolution became visible as in England; the commons, when they met again, seemed no longer the same men; and, after the fall of their great viceroy, they coalesced with his English enemies to consummate his destruction. Hate long smothered by fear, but inflamed by the same cause, broke forth in a remonstrance of the commons presented through a committee, not to the king, but a superior power, the long parliament of England. The two houses united to avail themselves of the advantageous moment, and to extort, as they very justly might, from the necessities of Charles that confirmation of his promises which had been refused in his prosperity. Both parties, catholic as well as protestant, acted together in this national cause, shunning for the present to bring forward those differences which were not the less implacable for being thus deferred. The catalogue of temporal grievances was long enough to produce this momentary coalition: it might be groundless in some articles, it might be exaggerated in more, it might in many be of ancient standing; but few can pretend to deny that it exhibits a true picture of the misgovernment of Ireland at all times, but especially under the earl of Strafford. The king, in May, 1641, consented to the greater part of their demands, but unfortunately they were never granted by law.

But the disordered condition of his affairs gave encouragement to hopes far beyond what any parliamentary remonstrances could realize; hopes long cherished when they had seemed vain to the world, but such as courage and bigotry and resentment would never lay aside. The court of Madrid had not abandoned its connexion with the disaffected Irish, especially of the priesthood; the son of

Tyrone, and many followers of that cause, served in its armies; and there seems much reason to believe that in the beginning of 1641 the project of insurrection was formed among the expatriated Irish, not without the concurrence of Spain, and perhaps of Richelieu. The government had passed from the vigorous hands of Strafford into those of two lords justices, sir William Parsons and sir John Borlase, men by no means equal to the critical circumstances wherein they were placed, though possibly too severely censured by those who do not look at their extraordinary difficulties with sufficient candour. The primary causes of the rebellion are not to be found in their supineness or misconduct, but in the two great sins of the English government; in the penal laws as to religion which pressed on almost the whole people, and in the systematic iniquity which despoiled them of their possessions. They could not be expected to miss such an occasion of revolt; it was an hour of revolution, when liberty was won by arms, and ancient laws were set at nought; the very success of their worst enemies, the covenanters in Scotland, seemed the assurance of their own victory, as it was the reproach of their submission.

§ 27. The rebellion broke out, as is well known, by a sudden massacre of the Scots and English in Ulster, designed no doubt by a vindictive and bigoted people to extirpate those races, and, if contemporary authorities are to be credited, falling little short of this in its execution. Their evident exaggeration has long been acknowledged; but possibly the scepticism of later writers has extenuated rather too much the horrors of this massacre. It was certainly not the crime of the catholics generally; nor, perhaps, in the other provinces of Ireland are they chargeable with more cruelty than their opponents. Whatever may have been the original intentions of the lords of the pale, or of the Anglo-Irish professing the old religion in general (which has been a problem in history), a few months only elapsed before they were almost universally engaged in the war. The old distinctions of Irish and English blood were obliterated by those of religion; and it became a desperate contention whether the majority of the nation should be trodden to the dust by forfeiture and persecution, or the crown lose everything beyond a nominal sovereignty over Ireland. The insurgents, who might once perhaps have been content with a repeal of the penal laws, grew naturally in their demands through success, or rather through the inability of the English government to keep the field, and began to claim the entire establishment of their religion; terms in themselves not unreasonable, nor apparently disproportionate to their circumstances, and which the king was, in his distresses, nearly ready to concede, but such as never could have been obtained from a third party, of whom they did not sufficiently

think, the parliament and people of England. The commons had, at the very beginning of the rebellion, voted that all the forfeited estates of the insurgents should be allotted to such as should aid in reducing the island to obedience; and thus rendered the war desperate on the part of the Irish. No great efforts were made, however, for some years; but, after the king's person had fallen into their hands, the victorious party set themselves in earnest to effect the conquest of Ireland. This was achieved by Cromwell and his powerful army after several years, with such bloodshed and rigour that, in the opinion of lord Clarendon, the sufferings of that nation, from the outset of the rebellion to its close, have never been surpassed but by those of the Jews in their destruction by Titus.

§ 28. At the restoration of Charles II. there were in Ireland two people, one either of native or old English blood, the other of recent settlement; one catholic, the other protestant; one humbled by defeat, the other insolent with victory; one regarding the soil as his ancient inheritance, the other as his acquisition and reward. There were three religions—for the Scots of Ulster and the army of Cromwell had never owned the episcopal church, which for several years had fallen almost as low as that of Rome. There were claims, not easily set aside on the score of right, to the possession of lands, which the entire island could not satisfy. In England, little more had been necessary than to revive a suspended constitution; in Ireland, it was something beyond a new constitution and code of law that was required—it was the titles and boundaries of each man's private estate that were to be litigated and adjudged. The episcopal church was restored with no delay, as never having been abolished by law; and a parliament, containing no catholics and not many vehement nonconformists, proceeded to the great work of settling the struggles of opposite claimants by a fresh partition of the kingdom.

§ 29. The king had already published a declaration for the settlement of Ireland, intended as the basis of an act of parliament. The adventurers, or those who, on the faith of several acts passed in England in 1642, with the assent of the late king, had advanced money for quelling the rebellion, in consideration of lands to be allotted to them in certain stipulated proportions, and who had, in general, actually received them from Cromwell, were confirmed in all the lands possessed by them on the 7th of May, 1659; and all the deficiencies were to be supplied before the next year. The army was confirmed in the estates already allotted for their pay, with an exception of church lands and some others. Those officers who had served in the royal army against the Irish before 1649 were to be satisfied for their pay, at least to the amount of five-eighths, out of lands to be allotted for that purpose. Innocent papists,

that is, such as were not concerned in the rebellion and whom Cromwell had arbitrarily transplanted into Connaught, were to be restored to their estates, and those who possessed them to be indemnified. Those who had submitted to the peace of 1648, and had not been afterwards in arms, if they had not accepted lands in Connaught, were also to be restored as soon as those who now possessed them should be satisfied for their expenses. Those who had served the king abroad, and thirty-six enumerated persons of the Irish nobility and gentry, were to be put on the same footing as the last. The precedence of restitution, an important point where the claims exceeded the means of satisfying them, was to be in the order above specified.

This declaration was by no means pleasing to all concerned. The loyal officers who had served before 1649 murmured that they had little prospect of more than twelve shillings and sixpence in the pound, while the republican army of Cromwell would receive the full value. The Irish were more loud in their complaints; no one was to be held innocent who had been in the rebel quarters before the cessation of 1648, and other qualifications were added so severe that hardly any could expect to come within them. In the house of commons the majority, consisting very much of the new interests, that is, of the adventurers and army, were in favour of adhering to the declaration. In the house of lords it was successfully urged that, by gratifying the new men to the utmost, no fund would be left for indemnifying the loyalists or the innocent Irish. It was proposed that, if the lands not yet disposed of should not be sufficient to satisfy all the interests for which the king had meant to provide by his declaration, there should be a proportional deduction out of every class for the benefit of the whole. These discussions were adjourned to London, where delegates of the different parties employed every resource of intrigue at the English court. The king's bias towards the religion of the Irish had rendered him their friend, and they seemed, at one time, likely to reverse much that had been intended against them; but their agents grew rash with hope, assumed a tone of superiority which ill became their condition, affected to justify their rebellion, and finally so much disgusted their sovereign that he ordered the act of settlement to be sent back with little alteration, except the insertion of some new Irish nominees.

The execution of this act was intrusted to English commissioners, from whom it was reasonable to hope for an impartiality which could not be found among the interested classes. Notwithstanding the rigorous proofs nominally exacted, more of the Irish were pronounced innocent than the commons had expected; and the new members having the sway of that assembly, a clamour was raised

that the popish interest had prevailed: some talked of defending their estates by arms, some even meddled in fanatical conspiracies against the government; it was insisted that a closer inquisition should be made and stricter qualifications demanded. The manifest deficiency of lands to supply all the claimants for whom the act of settlement provided, made it necessary to resort to a supplemental measure, called the act of explanation. The adventurers and soldiers relinquished one-third of the estates enjoyed by them on the 7th of May, 1659. Twenty Irish nominees were added to those who were to be restored by the king's favour; but all those who had not already been adjudged innocent, more than three thousand in number, were absolutely cut off from any hope of restitution. The great majority of these no question were guilty; yet they justly complained of this confiscation without a trial. Upon the whole result, the Irish catholics, having previously held about two-thirds of the kingdom, lost more than one-half of their possessions by forfeiture on account of their rebellion. If we can rely at all on the calculations, made almost in the infancy of political arithmetic by one of its most diligent investigators, they were diminished also by much more than one-third through the calamities of that period.

It is more easy to censure the particular inequalities, or even in some respects injustice of the act of settlement, than to point out what better course was to have been adopted. The re-adjustment of all private rights after so entire a destruction of their landmarks, could only be effected by the coarse process of general rules. Nor does it appear that the catholics, considered as a great mass, could reasonably murmur against the confiscation of half their estates, after a civil war wherein it is evident that so large a proportion of themselves were concerned. Charles it is true, had not been personally resisted by the insurgents; but, as chief of England, he stood in the place of Cromwell, and equally represented the sovereignty of the greater island over the lesser, which under no form of government it would concede.

§ 30. The catholics, however, thought themselves oppressed by the act of settlement, and could not forgive the duke of Ormond for his constant regard to the protestant interests and the supremacy of the English crown. They had enough to encourage them in the king's bias towards their religion, which he was able to manifest more openly than in England. Under the administration of lord Berkely in 1670, at the time of Charles's conspiracy with the king of France to subvert religion and liberty, they began to menace an approaching change, and to aim at revoking, or materially weakening, the act of settlement. The most bigoted and insolent of the popish clergy, who had lately rejected with indignation an offer of more reasonable men to renounce the tenets obnoxious to civil governments,

were countenanced at Dublin; but the first alarm of the new proprietors, as well as the general apprehension of the court's designs in England, soon rendered it necessary to desist from the projected innovations. The next reign, of course, reanimated the Irish party; a dispensing prerogative set aside all the statutes; every civil office, the courts of justice and the privy council, were filled with catholics; the protestant soldiers were disbanded; the citizens of that religion were disarmed; the tithes were withheld from their clergy; they were suddenly reduced to feel that bitter condition of a conquered and proscribed people which they had long rendered the lot of their enemies. From these enemies, exasperated by bigotry and revenge, they could have nothing but a full and exceeding measure of retaliation to expect; nor had they even the last hope that an English king, for the sake of his crown and country, must protect those who formed the strongest link between the two islands. A man violent and ambitious, without superior capacity, the earl of Tyrconnel, lord-lieutenant in 1687 and commander of the army, looked only to his master's interests, in subordination to those of his countrymen and of his own. It is now ascertained that, doubtful of the king's success in the struggle for restoring popery in England, he had made secret overtures to some of the French agents for casting off all connexion with that kingdom in case of James's death, and, with the aid of Louis, placing the crown of Ireland on his own head.

§ 31. The Revolution in England was followed by a war in Ireland of three years' duration, and a war on both sides, like that of 1641, for self-preservation. In the parliament held by James at Dublin in 1690, the act of settlement was repealed, and above 2000 persons attainted by name—both, it has been said perhaps with little truth, against the king's will, who dreaded the impetuous nationality that was tearing away the bulwarks of his throne. But the magnanimous defence of Derry and the splendid victory of the Boyne restored the protestant cause: though the Irish, with the succour of French troops, maintained for two years a gallant resistance, they could not ultimately withstand the triple superiority of military talents, resources, and discipline. Their bravery, however, served to obtain the articles of Limerick on the surrender of that city—conceded by their noble-minded conqueror, against the disposition of those who longed to plunder and persecute their fallen enemy. By the first of these articles, "the Roman catholics of this kingdom shall enjoy such privileges in the exercise of their religion as are consistent with the laws of Ireland, or as they did enjoy in the reign of king Charles II.; and their majesties, as soon as their affairs will permit them to summon a parliament in this kingdom, will endeavour to procure the said Roman catholics such further security in that particular as may preserve them from any disturbance upon the account

of their said religion." The second secures to the inhabitants of Limerick and other places then in possession of the Irish, and to all officers and soldiers then in arms who should return to their majesties' obedience, and to all such as should be under their protection in the counties of Limerick, Kerry, Clare, Galway, and Mayo, all their estates and all their rights, privileges, and immunities, which they held in the reign of Charles II., free from all forfeitures or outlawries incurred by them.

This second article, but only as to the garrison of Limerick or other persons in arms, is confirmed by statute some years afterwards. The first article seems, however, to be passed over. The forfeitures on account of the rebellion, estimated at 1,060,792 acres, were somewhat diminished by restitutions to the ancient possessors under the capitulation; the greater part were lavishly distributed to English grantees. It appears from hence that at the end of the seventeenth century the Irish or Anglo-Irish catholics could hardly possess above one-sixth or one-seventh of the kingdom. They were still formidable from their numbers and their sufferings; and the victorious party saw no security but in a system of oppression, contained in a series of laws during the reigns of William and Anne, which have scarce a parallel in European history, unless it be that of the protestants in France, after the revocation of the edict of Nantes, who yet were but a feeble minority of the whole people. No papist was allowed to keep a school, or to teach any in private houses, except the children of the family. Severe penalties were denounced against such as should go themselves or send others for education beyond seas in the Romish religion: and, on probable information given to a magistrate, the burden of proving the contrary was thrown on the accused—the offence not to be tried by a jury, but by justices at quarter sessions. Intermarriages between persons of different religion, and possessing any estate in Ireland, were forbidden; the children, in case of either parent being protestant, might be taken from the other, to be educated in that faith. No papist could be guardian to any child; but the court of chancery might appoint some relation or other person to bring up the ward in the protestant religion. The eldest son, being a protestant, might turn his father's estate in fee simple into a tenancy for life, and thus secure his own inheritance. But if the children were all papists, the father's lands were to be of the nature of gavel-kind, and descend equally among them. Papists were disabled from purchasing lands except for terms of not more than thirty-one years, at a rent not less than two-thirds of the full value. They were even to conform within six months after any title should accrue by descent, devise, or settlement, on pain of forfeiture to the next protestant heir—a provision which seems intended to exclude them from real property

altogether, and to render the others almost supererogatory. Arms, says the poet, remain to the plundered; but the Irish legislature knew that the plunder would be imperfect and insecure while arms remained: no papist was permitted to retain them, and search might be made at any time by two justices. The bare celebration of catholic rites was not subjected to any fresh penalties; but regular priests, bishops, and others claiming jurisdiction, and all who should come into the kingdom from foreign parts, were banished on pain of transportation in case of neglecting to comply, and of high treason in case of returning from banishment. Lest these provisions should be evaded, priests were required to be registered; they were forbidden to leave their own parishes, and rewards were held out to informers who should detect the violations of these statutes, to be levied on the popish inhabitants of the country. To have exterminated the catholics by the sword, or expelled them, like the Moriscoes of Spain, would have been little more repugnant to justice and humanity, but incomparably more politic.

§ 32. It may easily be supposed that no political privileges would be left to those who were thus debarred of the common rights of civil society. The Irish parliament had never adopted the act passed in the fifth of Elizabeth, imposing the oath of supremacy on the members of the commons. It had been full of catholics under the queen and her two next successors. In the second session of 1641, after the flames of rebellion had enveloped almost all the island, the house of commons were induced to exclude, by a resolution of their own, those who would not take that oath; a step which can only be judged in connexion with the general circumstances of Ireland at that awful crisis. An act of the English parliament after the Revolution requires every member of both houses of parliament to take the new oaths of allegiance and supremacy, and to subscribe the declaration against transubstantiation before taking his seat. This statute was adopted and enacted by the Irish parliament in 1782, after they had renounced the legislative supremacy of England under which it had been enforced. The elective franchise, which had been rather singularly spared in an act of Anne, was taken away from the Roman catholics of Ireland in 1715, or, as some think, not absolutely till 1727.

These tremendous statutes had in some measure the effect which their framers designed. The wealthier families, against whom they were principally levelled, conformed in many instances to the protestant church. The catholics were extinguished as a political body; and, though any willing allegiance to the house of Hanover would have been monstrous, and it is known that their bishops were constantly nominated to the pope by the Stuart princes, they did not manifest at any period, or even during the rebellions of 1715

and 1715, the least movement towards a disturbance of the government. Yet for thirty years after the accession of George I. they continued to be insulted in public proceedings under the name of the common enemy, sometimes oppressed by the enactment of new statutes, or the stricter execution of the old; till in the latter years of George II. their peaceable deportment, and the rise of a more generous spirit among the Irish protestants, not only sheathed the fangs of the law, but elicited expressions of esteem from the ruling powers, which they might justly consider as the pledge of a more tolerant policy. The mere exercise of their religion in an obscure manner had long been permitted without molestation.

Thus in Ireland there were three nations, the original natives, the Anglo-Irish, and the new English; the two former catholic, except some, chiefly of the upper classes, who had conformed to the church; the last wholly protestant. There were three religions, the Roman catholic, the established or Anglican, and the Presbyterian; more than one-half of the protestants, according to the computation of those times, belonging to the latter denomination. These, however, in a less degree were under the ban of the law as truly as the catholics themselves; they were excluded from all civil and military offices by a test act, and even their religious meetings were denounced by penal statutes. Yet the house of commons after the Revolution always contained a strong presbyterian body, and being unable, as it seems, to obtain an act of indemnity for those who had taken commissions in the militia, while the rebellion of 1715 was raging in Great Britain, had recourse to a resolution, that whoever should prosecute any dissenter for accepting such a commission is an enemy to the king and the protestant interest. They did not even obtain a legal toleration till 1720. It seems as if the connexion of the two islands, and the whole system of constitutional laws in the lesser, subsisted only for the sake of securing the privileges and emoluments of a small number of ecclesiastics, frequently strangers, who rendered very little return for their enormous monopoly. A great share, in fact, of the temporal government under George II. was thrown successively into the hands of two primates, Boulter and Stone: the one a worthy but narrow-minded man, who showed his egregious ignorance of policy in endeavouring to promote the wealth and happiness of the people, whom he at the same time studied to depress and discourage in respect of political freedom; the other an able, but profligate and ambitious statesman, whose name is mingled, as an object of odium and enmity, with the first great struggles of Irish patriotism.

The new Irish nation, or rather the protestant nation, since all distinctions of origin have, from the time of the great rebellion,

been merged in those of religion, partook in large measure of the spirit that was poured out on the advocates of liberty and the revolution in the sister kingdom. Their parliament was always strongly whig, and scarcely manageable during the later years of the queen. They began to assimilate themselves more and more to the English model, and to cast off by degrees the fetters that galled and degraded them. By Poyning's celebrated law, the initiative power was reserved to the English council. This act, at one time popular in Ireland, was afterwards justly regarded as destructive of the rights of their parliament, and a badge of the nation's dependence. It was attempted by the commons in 1641, and by the catholic confederates in the rebellion, to procure its repeal, which Charles I. steadily refused, till he was driven to refuse nothing. In his son's reign it is said that "the council framed bills altogether; a negative alone on them and their several provisoes was left to parliament; only a general proposition for a bill by way of address to the lord lieutenant and council came from parliament; nor was it till after the revolution that heads of bills were presented; these last in fact resembled acts of parliament or bills, with only the small difference of 'We pray that it may be enacted,' instead of 'Be it enacted.'" They assumed about the same time the examination of accounts, and of the expenditure of public money.

Meanwhile, as they gradually emancipated themselves from the ascendancy of the crown, they found a more formidable power to contend with in the English parliament. It was acknowledged, by all at least of the protestant name, that the crown of Ireland was essentially dependent on that of England, and subject to any changes that might affect the succession of the latter. But the question as to the subordination of her legislature was of a different kind. The precedents and authorities of early ages seem not decisive; so far as they extend, they rather countenance the opinion that English statutes were of themselves valid in Ireland. But from the time of Henry VI. or Edward IV. it was certainly established that they had no operation, unless enacted by the Irish parliament. This, however, would not legally prove that they might not be binding, if express words to that effect were employed; and such was the doctrine of lord Coke and of other English lawyers. This came into discussion about the eventful period of 1641. The Irish in general protested against the legislative authority of England as a novel theory which could not be maintained; and two treatises on the subject, one ascribed to lord chancellor Bolton, or more probably to an eminent lawyer, Patrick Darcy, for the independence of Ireland, another, in answer to it, by serjeant Mayart, may be read in the *Zibernica* of Harris. Very

few instances occurred before the Revolution wherein the English parliament thought fit to include Ireland in its enactments, and none perhaps wherein they were carried into effect. But after the Revolution several laws of great importance were passed in England to bind the other kingdom, and acquiesced in without express opposition by its parliament. Molyneux, however, in his celebrated 'Case of Ireland's being bound by Acts of Parliament in England stated,' published in 1697, set up the claim of his country for absolute legislative independency. The house of commons at Westminster came to resolutions against this book; and, with their high notions of parliamentary sovereignty, were not likely to desist from a pretension which, like the very similar claim to impose taxes in America, sprung in fact from the semi-republican scheme of constitutional law established by means of the revolution. It is evident that while the sovereignty and enacting power was supposed to reside wholly in the king, and only the power of consent in the two houses of parliament, it was much less natural to suppose a control of the English legislature over other dominions of the crown, having their own representation for similar purposes, than after they had become, in effect and in general sentiment, though not quite in the statute book, co-ordinate partakers of the supreme authority. The Irish parliament, however, advancing as it were in a parallel line, had naturally imbibed the same sense of its own supremacy, and made at length an effort to assert it. A judgment from the court of exchequer in 1719 having been reversed by the house of lords, an appeal was brought before the lords in England, who affirmed the judgment of the exchequer. The Irish lords resolved that no appeal lay from the court of exchequer in Ireland to the king in parliament in Great Britain; and the barons of that court, having acted in obedience to the order of the English lords, were taken into the custody of the black rod. That house next addressed the king, setting forth their reasons against admitting the appellant jurisdiction. But the lords in England, after requesting the king to confer some favour on the barons of the exchequer who had been censured and illegally imprisoned for doing their duty, ordered a bill to be brought in for better securing the dependency of Ireland upon the crown of Great Britain, which declares

"That the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons of Great Britain, in parliament assembled, had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the house of lords of Ireland have not, nor of right ought to have, any jurisdiction to judge of, reverse, or affirm any judgment, sentence, or decree given or made in any court within the said kingdom; and that

all proceedings before the said house of lords upon any such judgment, sentence, or decree, are, and are hereby declared to be, utterly null and void, to all intents and purposes whatsoever." *

The English government found no better method of counteracting this rising spirit of independence than by bestowing the chief posts in the state and church on strangers, in order to keep up what was called the English interest. This wretched policy united the natives of Ireland in jealousy and discontent, which the latter years of Swift were devoted to inflame. It was impossible that the kingdom should become, as it did under George II., more flourishing through its great natural fertility, its extensive manufacture of linen, and its facilities for commerce, though much restricted, the domestic alarm from the papists also being allayed by their utter prostration, without writhing under the indignity of its subordination; or that a house of commons, constructed so much on the model of the English, could bear patiently of liberties and privileges it did not enjoy.

§ 33. These aspirations for equality first, perhaps, broke out into audible complaints in the year 1753. The country was in so thriving a state that there was a surplus revenue after payment of all charges. The house of commons determined to apply this to the liquidation of a debt. The government, though not unwilling to admit of such an application, maintained that the whole revenue belonged to the king, and could not be disposed of without his previous consent. In England, where the grants of parliament are appropriated according to estimates, such a question could hardly arise; nor would there, I presume, be the slightest doubt as to the control of the house of commons over a surplus income. But in Ireland the practice of appropriation seems never to have prevailed, at least so strictly; and the constitutional right might perhaps not unreasonably be disputed. After long and violent discussions, wherein the speaker of the commons and other eminent men bore a leading part on the popular side, the crown was so far victorious as to procure some motions to be carried, which seemed to imply its authority; but the house took care, by more special applications of the revenue, to prevent the recurrence of an undisputed surplus. From this era the great parliamentary history of Ireland begins, and is terminated after half a century by the Union: a period fruitful of splendid eloquence, and of ardent, though not always uncompromising, patriotism, but which, of course, is beyond the limits prescribed to these pages.

I N D E X.

A B B E Y

A R R E S T.

A

- lay Lands, appropriation of them considered, 44. 46. Lawfulness of seizing, 44. Distribution of, 45. Retained by the parliament under Mary, 45. Increase the power of the nobility, &c. 45. 46. Charity of the early possessors of, 46. Contrived by the pope to their new possessors, 57.
- Abbot (George, archbishop of Cantebury) requested, 211. His Calvinistic zeal, 235.
- Abbots, surrenders of, to Henry VIII. probably unlawful, 43. Seats of, in parliament, and their majority over the temporal peers, 43.
- Abolition of military tenures, 44.
- Act of Indemnity, 347. Exclusion of the regicides from the, 46. Commons vote to exclude seven, yet add several more, *ib.*
- of Uniformity, 356. Clause against the presbyterians, *ib.* No person to hold any preferment in England without episcopal ordination, *ib.* 357. Every minister compelled to give his assent to the Book of Common Prayer on pain of being deprived of his benefice, *ib.*
- for suppressing conventicles, 361, 378. Opposed by bishop Wilkins, *ib.* Supported by Sheldon and others, 379.
- of Supremacy, particulars of the, 381.
- of Security in Scotland, 609.
- of 1700 against the growth of popery, 510. Severity of its penalties, *ib.* Not carried into effect, *ib.*
- of Settlement, 510. Limitations of the prerogative contained in it, 512. Remarkable cause of the fourth remedial article, 513. Its precaution against the influence of foreigners, 515, 516. Importance of its sixth article, *ib.*

- Act of Toleration, a scanty measure of religious liberty, 507.
- against wrongous imprisonment in Scotland, 603.
- for settlement of Ireland, 641, 644. Its insufficiency, 645.
- of explanation, 645.
- Acts, harsh, against the native Irish in settlement of colonies, 616, 617.
- replacing the crown in its prerogatives, 352. (*See Bills and Statutes*)
- Adamson, archbishop of St. Andrews, obliged to retract before the general assembly of the church of Scotland, 595.
- Addresses, numerous served, from all parties to James II., 459.
- Administration of Ireland, in whom vested, 621.
- Agitators established in every regiment, 293.
- Aix-la-Chapelle, peace of, 172.
- All nation, ancient English laws on, 12.
- Alliance, extent and power of, 32, note.
- , oath of, administered to papists under James I., 207.
- Almanza, battle of, 551.
- Altars removed in churches, 50.
- Alva (duke of), his designed invasion of England, 71, 73.
- Ambassadors, exempt from criminal process, 81. Extent of their privilege examined, *ib.*
- Andrews (Dr. Laurelot, bishop of Winchester), he contributes towards a relapse into superstition, 238.
- Anglican church, ejected members of, their claims, 347, 348.
- Anjou (duke of), his proposed marriage with queen Elizabeth, 120.
- Anne (queen of Great Britain), her incapacity for government, 537. Her confidence in Godolphin and Marlborough, *ib.* Revolutions in her ministry, *ib.* Alarmed at the expedition of the Pretender, 545. Her secret intentions

- with respect to the Pretender never divulged, 546. death, 443.
- Appeals in civil suits in Scotland lay from the baron court to that of the sheriff lord of regality, and ultimately to the parliament, 591.
- Argyle (earl of), refuses to subscribe the test, 604. Convicted of treason upon statute of treason-making, escapes, *ib.* Is executed at his rebellion upon his sentence, *ib.*
- Aristocracy, English, in Scotland, analogy of, to that of France, 619.
- of Scotland, influence of, in the reign of James IV., 591.
- Arlington, one of the Cabal, 171. Obligated to change policy, 382.
- Arminian controversy, view of the, 204-206.
- Armstrong (sir Thomas), glorified up by the State, and executed without trial, 419.
- Army of Scotland enters England, 282.
- , parliamentary, remodelled, 287. Advances towards London, 296.
- , proposals of the, to king Charles I. at Hampton-court, 297, 298. Rejected by him, 299. Innovating spirit, 302. Publishes a declaration for the settlement of nation, 303. Principal office of, determine to bring king to justice, *ib.*
- disbanded, 345. Origin of the present, 346.
- , great, suddenly raised Charles, 385.
- , standing, Charles I. necessity for, 374. Its illegality in time of peace, 4480. (*See Standing Army*)
- Apprehensions from it, 56.
- reduced by the Commons, 495.
- recruited by violent measures, 540.
- Array, commissions of, 267.
- Arrest, exemption from, claimed by the House of Commons,

139-142. Parliamentary privilege of exemption from, 136.

Articles, lords of the, their origin and power, 588, 589. Regularly named in the records of every parliament from the reign of James IV., *ib.* What they propounded, when ratified by the three estates, did not require the king's consent to give it validity, 591. Abolished, 608.

— of the church of England, real presence denied in the, 52. Subsequently altered, *ib.* Original drawing up of the, 55. Brought before parliament, 98. Statute for subscribing, *ib.* Ministers deprived for refusing, 99.

— of the church on predestination, 204, 205.

Articuli Cleri, account of the, 165, 166.

Artillery Company established, 268.

Arundel (Thomas Howard, earl of), his commitment to the Tower, 194.

Ashby, a burgess of Aylesbury, sues the returning officer for refusing his vote, 582.

Ashley (Anthony, lord, afterwards earl of Shaftesbury), one of the Cabal, 171.

Ashton (John), remarks on his conviction for high treason on presumptive evidence, 529.

Association abjuring the title of James II., and pledging the subscribers to revenge the death of William III., generally signed, 490.

Atkinson (—), his speech in the House of Commons against the statute for the queen's power, 62.

Attainders against Russell, Sidney, Cornish, and Armstrong, reversed, 528.

Atterbury (Dr.), an account of his book entitled 'Rights and Privileges of an English Convocation,' 556. Promoted to the see of Rochester, 557. Disaffection to the house of Hanover, 561. Deprived of his see, and banished for life, *ib.*

Augsburg Confession, consubstantiation acknowledged in the, 51.

—, league of, 467.

Aylmer (John, bishop of London), his covetousness and prosecution of the parliament, 104.

B.

Bacon (sir Francis, lord Verulam), his praise of the laws of Henry VII., 8. His account of causes belonging to the Court of Star-chamber, 30. Disliked agreeing with the House of Lords on a subsidy, 144. His advice to James I. on summoning a parliament, 172. Acquainted with the particulars of Overbury's murder, 181. Implicated for bribery, 183.

— (sir Nicholas), abilities of, 60. Suspected of favouring the house of Suffolk, 68. His reply to the speaker of the House of Commons, 130, 131.

Balmerino (lord), tried for treason on the Scottish statute of leasing-making, 601.

Bancroft (Richard), archbishop of Canterbury, endeavours to increase the ecclesiastical jurisdiction, 165, 166. Puritan clergymen deprived by, 202. Defence of episcopacy, *ib.*, 203.

Bangorian controversy, 557. Character of it, *ib.*

Bank of England, its origin and depreciation of its notes, 493.

Banks (sir John), attorney-general, his defence of the king's absolute power, 224, 225.

Barbones' parliament, 314. Apply themselves with vigour to reform abuses, *ib.* Vote for the abolition of the Court of Chancery, *ib.* Alarm the clergy, *ib.* Surrender their power to Cromwell, *ib.*

Barillon (the French ambassador), favours the opposition, 385. Sums given to members of parliament mentioned by, 387. Remarks on that corruption, *ib.*, 388. Supplications against, 445.

Baronets created by James I. to raise money, 171, 172.

Barnes, English, their ambitions in Ireland, 617, 618.

Barrier treaty of lord Townshend, 541.

Balford (Francis Russell, second earl of), imprisoned under queen Mary, on account of his religion, 56.

— (Francis Russell, fourth earl of), plan to bring back popular leaders frustrated by his death, 262.

— (William Russell, fifth earl of), joins king Charles I.

at Oxford, 278. Is ill received, *ib.* Returns to the parliament, *ib.*

Beggars caused by the alms of monasteries, 46. Statute against giving to, *ib.*, note.

Bell (Mr.), his attack on the, 172. Elected speaker, *ib.*

Bellarmine (Cardinal Robert), opposes the test-oath of James I., 207.

Bellay (Joachim du, bishop of Bayonne), reports that a revolt was expected in England on the divorce of Henry VIII., 42.

Benefices, first fruits of, taken from the pope, 39.

Benevolence, exaction so called in 1548, 13. Consequences of refusing to contribute to it, 14. Taken by queen Elizabeth, 126.

Benevolences, oppression of, under Edward IV., 8. Abolished under Richard III., and revived by Henry VII., *ib.* Granted by private persons, *ib.* Required under James I., 174.

Benlson (—), his imprisonment by bishop Aylmer, 104.

Berkely (Charles, first earl of), his administration in Ireland in 1670, 645.

Berkley (sir John), justice of the king's bench, defends ship-money, 222. And the king's absolute power, 225.

Berwick, right of election extended to, by Henry VIII., 415.

Bible, 1535, translated into English, 48. Liberty of reading, under Henry VIII., *ib.*

Bill of exclusion drawn in favour of the duke of York's daughters, 424. Of rights, 479. Of indemnity, 422. For regulating trials upon charges of high treason, 500. Of 7th of queen Anne, affirming particular privileges to the accused, 501. To prevent occasional conformity, 1694. The Commutation Bill, 1712, cited by the Lords, 559. Passed by next parliament, *ib.* Helped by the whigs, 560.

Black (Dr. Thomas), one of the grandees of the non-juror's communion, 14, 191.

Birth of the Pretender, 547. Claims attending it, 451, 454.

Bishops of England, and list of 181 names in their list, 1. Taken away, 11. Loss of church property in 1534, 55. In 1548, 1549. In 1554, 1555. In 1556, 1557. In 1558, 1559. In 1560, 1561. In 1562, 1563. In 1564, 1565. In 1566, 1567. In 1568, 1569. In 1570, 1571. In 1572, 1573. In 1574, 1575. In 1576, 1577. In 1578, 1579. In 1580, 1581. In 1582, 1583. In 1584, 1585. In 1586, 1587. In 1588, 1589. In 1590, 1591. In 1592, 1593. In 1594, 1595. In 1596, 1597. In 1598, 1599. In 1600, 1601. In 1602, 1603. In 1604, 1605. In 1606, 1607. In 1608, 1609. In 1610, 1611. In 1612, 1613. In 1614, 1615. In 1616, 1617. In 1618, 1619. In 1620, 1621. In 1622, 1623. In 1624, 1625. In 1626, 1627. In 1628, 1629. In 1630, 1631. In 1632, 1633. In 1634, 1635. In 1636, 1637. In 1638, 1639. In 1640, 1641. In 1642, 1643. In 1644, 1645. In 1646, 1647. In 1648, 1649. In 1650, 1651. In 1652, 1653. In 1654, 1655. In 1656, 1657. In 1658, 1659. In 1660, 1661. In 1662, 1663. In 1664, 1665. In 1666, 1667. In 1668, 1669. In 1670, 1671. In 1672, 1673. In 1674, 1675. In 1676, 1677. In 1678, 1679. In 1680, 1681. In 1682, 1683. In 1684, 1685. In 1686, 1687. In 1688, 1689. In 1690, 1691. In 1692, 1693. In 1694, 1695. In 1696, 1697. In 1698, 1699. In 1700, 1701. In 1702, 1703. In 1704, 1705. In 1706, 1707. In 1708, 1709. In 1710, 1711. In 1712, 1713. In 1714, 1715. In 1716, 1717. In 1718, 1719. In 1720, 1721. In 1722, 1723. In 1724, 1725. In 1726, 1727. In 1728, 1729. In 1730, 1731. In 1732, 1733. In 1734, 1735. In 1736, 1737. In 1738, 1739. In 1740, 1741. In 1742, 1743. In 1744, 1745. In 1746, 1747. In 1748, 1749. In 1750, 1751. In 1752, 1753. In 1754, 1755. In 1756, 1757. In 1758, 1759. In 1760, 1761. In 1762, 1763. In 1764, 1765. In 1766, 1767. In 1768, 1769. In 1770, 1771. In 1772, 1773. In 1774, 1775. In 1776, 1777. In 1778, 1779. In 1780, 1781. In 1782, 1783. In 1784, 1785. In 1786, 1787. In 1788, 1789. In 1790, 1791. In 1792, 1793. In 1794, 1795. In 1796, 1797. In 1798, 1799. In 1800, 1801. In 1802, 1803. In 1804, 1805. In 1806, 1807. In 1808, 1809. In 1810, 1811. In 1812, 1813. In 1814, 1815. In 1816, 1817. In 1818, 1819. In 1820, 1821. In 1822, 1823. In 1824, 1825. In 1826, 1827. In 1828, 1829. In 1830, 1831. In 1832, 1833. In 1834, 1835. In 1836, 1837. In 1838, 1839. In 1840, 1841. In 1842, 1843. In 1844, 1845. In 1846, 1847. In 1848, 1849. In 1850, 1851. In 1852, 1853. In 1854, 1855. In 1856, 1857. In 1858, 1859. In 1860, 1861. In 1862, 1863. In 1864, 1865. In 1866, 1867. In 1868, 1869. In 1870, 1871. In 1872, 1873. In 1874, 1875. In 1876, 1877. In 1878, 1879. In 1880, 1881. In 1882, 1883. In 1884, 1885. In 1886, 1887. In 1888, 1889. In 1890, 1891. In 1892, 1893. In 1894, 1895. In 1896, 1897. In 1898, 1899. In 1900, 1901. In 1902, 1903. In 1904, 1905. In 1906, 1907. In 1908, 1909. In 1910, 1911. In 1912, 1913. In 1914, 1915. In 1916, 1917. In 1918, 1919. In 1920, 1921. In 1922, 1923. In 1924, 1925. In 1926, 1927. In 1928, 1929. In 1930, 1931. In 1932, 1933. In 1934, 1935. In 1936, 1937. In 1938, 1939. In 1940, 1941. In 1942, 1943. In 1944, 1945. In 1946, 1947. In 1948, 1949. In 1950, 1951. In 1952, 1953. In 1954, 1955. In 1956, 1957. In 1958, 1959. In 1960, 1961. In 1962, 1963. In 1964, 1965. In 1966, 1967. In 1968, 1969. In 1970, 1971. In 1972, 1973. In 1974, 1975. In 1976, 1977. In 1978, 1979. In 1980, 1981. In 1982, 1983. In 1984, 1985. In 1986, 1987. In 1988, 1989. In 1990, 1991. In 1992, 1993. In 1994, 1995. In 1996, 1997. In 1998, 1999. In 2000, 2001. In 2002, 2003. In 2004, 2005. In 2006, 2007. In 2008, 2009. In 2010, 2011. In 2012, 2013. In 2014, 2015. In 2016, 2017. In 2018, 2019. In 2020, 2021. In 2022, 2023. In 2024, 2025. In 2026, 2027. In 2028, 2029. In 2030, 2031. In 2032, 2033. In 2034, 2035. In 2036, 2037. In 2038, 2039. In 2040, 2041. In 2042, 2043. In 2044, 2045. In 2046, 2047. In 2048, 2049. In 2050, 2051. In 2052, 2053. In 2054, 2055. In 2056, 2057. In 2058, 2059. In 2060, 2061. In 2062, 2063. In 2064, 2065. In 2066, 2067. In 2068, 2069. In 2070, 2071. In 2072, 2073. In 2074, 2075. In 2076, 2077. In 2078, 2079. In 2080, 2081. In 2082, 2083. In 2084, 2085. In 2086, 2087. In 2088, 2089. In 2090, 2091. In 2092, 2093. In 2094, 2095. In 2096, 2097. In 2098, 2099. In 2100, 2101. In 2102, 2103. In 2104, 2105. In 2106, 2107. In 2108, 2109. In 2110, 2111. In 2112, 2113. In 2114, 2115. In 2116, 2117. In 2118, 2119. In 2120, 2121. In 2122, 2123. In 2124, 2125. In 2126, 2127. In 2128, 2129. In 2130, 2131. In 2132, 2133. In 2134, 2135. In 2136, 2137. In 2138, 2139. In 2140, 2141. In 2142, 2143. In 2144, 2145. In 2146, 2147. In 2148, 2149. In 2150, 2151. In 2152, 2153. In 2154, 2155. In 2156, 2157. In 2158, 2159. In 2160, 2161. In 2162, 2163. In 2164, 2165. In 2166, 2167. In 2168, 2169. In 2170, 2171. In 2172, 2173. In 2174, 2175. In 2176, 2177. In 2178, 2179. In 2180, 2181. In 2182, 2183. In 2184, 2185. In 2186, 2187. In 2188, 2189. In 2190, 2191. In 2192, 2193. In 2194, 2195. In 2196, 2197. In 2198, 2199. In 2200, 2201. In 2202, 2203. In 2204, 2205. In 2206, 2207. In 2208, 2209. In 2210, 2211. In 2212, 2213. In 2214, 2215. In 2216, 2217. In 2218, 2219. In 2220, 2221. In 2222, 2223. In 2224, 2225. In 2226, 2227. In 2228, 2229. In 2230, 2231. In 2232, 2233. In 2234, 2235. In 2236, 2237. In 2238, 2239. In 2240, 2241. In 2242, 2243. In 2244, 2245. In 2246, 2247. In 2248, 2249. In 2250, 2251. In 2252, 2253. In 2254, 2255. In 2256, 2257. In 2258, 2259. In 2260, 2261. In 2262, 2263. In 2264, 2265. In 2266, 2267. In 2268, 2269. In 2270, 2271. In 2272, 2273. In 2274, 2275. In 2276, 2277. In 2278, 2279. In 2280, 2281. In 2282, 2283. In 2284, 2285. In 2286, 2287. In 2288, 2289. In 2290, 2291. In 2292, 2293. In 2294, 2295. In 2296, 2297. In 2298, 2299. In 2300, 2301. In 2302, 2303. In 2304, 2305. In 2306, 2307. In 2308, 2309. In 2310, 2311. In 2312, 2313. In 2314, 2315. In 2316, 2317. In 2318, 2319. In 2320, 2321. In 2322, 2323. In 2324, 2325. In 2326, 2327. In 2328, 2329. In 2330, 2331. In 2332, 2333. In 2334, 2335. In 2336, 2337. In 2338, 2339. In 2340, 2341. In 2342, 2343. In 2344, 2345. In 2346, 2347. In 2348, 2349. In 2350, 2351. In 2352, 2353. In 2354, 2355. In 2356, 2357. In 2358, 2359. In 2360, 2361. In 2362, 2363. In 2364, 2365. In 2366, 2367. In 2368, 2369. In 2370, 2371. In 2372, 2373. In 2374, 2375. In 2376, 2377. In 2378, 2379. In 2380, 2381. In 2382, 2383. In 2384, 2385. In 2386, 2387. In 2388, 2389. In 2390, 2391. In 2392, 2393. In 2394, 2395. In 2396, 2397. In 2398, 2399. In 2400, 2401. In 2402, 2403. In 2404, 2405. In 2406, 2407. In 2408, 2409. In 2410, 2411. In 2412, 2413. In 2414, 2415. In 2416, 2417. In 2418, 2419. In 2420, 2421. In 2422, 2423. In 2424, 2425. In 2426, 2427. In 2428, 2429. In 2430, 2431. In 2432, 2433. In 2434, 2435. In 2436, 2437. In 2438, 2439. In 2440, 2441. In 2442, 2443. In 2444, 2445. In 2446, 2447. In 2448, 2449. In 2450, 2451. In 2452, 2453. In 2454, 2455. In 2456, 2457. In 2458, 2459. In 2460, 2461. In 2462, 2463. In 2464, 2465. In 2466, 2467. In 2468, 2469. In 2470, 2471. In 2472, 2473. In 2474, 2475. In 2476, 2477. In 2478, 2479. In 2480, 2481. In 2482, 2483. In 2484, 2485. In 2486, 2487. In 2488, 2489. In 2490, 2491. In 2492, 2493. In 2494, 2495. In 2496, 2497. In 2498, 2499. In 2500, 2501. In 2502, 2503. In 2504, 2505. In 2506, 2507. In 2508, 2509. In 2510, 2511. In 2512, 2513. In 2514, 2515. In 2516, 2517. In 2518, 2519. In 2520, 2521. In 2522, 2523. In 2524, 2525. In 2526, 2527. In 2528, 2529. In 2530, 2531. In 2532, 2533. In 2534, 2535. In 2536, 2537. In 2538, 2539. In 2540, 2541. In 2542, 2543. In 2544, 2545. In 2546, 2547. In 2548, 2549. In 2550, 2551. In 2552, 2553. In 2554, 2555. In 2556, 2557. In 2558, 2559. In 2560, 2561. In 2562, 2563. In 2564, 2565. In 2566, 2567. In 2568, 2569. In 2570, 2571. In 2572, 2573. In 2574, 2575. In 2576, 2577. In 2578, 2579. In 2580, 2581. In 2582, 2583. In 2584, 2585. In 2586, 2587. In 2588, 2589. In 2590, 2591. In 2592, 2593. In 2594, 2595. In 2596, 2597. In 2598, 2599. In 2600, 2601. In 2602, 2603. In 2604, 2605. In 2606, 2607. In 2608, 2609. In 2610, 2611. In 2612, 2613. In 2614, 2615. In 2616, 2617. In 2618, 2619. In 2620, 2621. In 2622, 2623. In 2624, 2625. In 2626, 2627. In 2628, 2629. In 2630, 2631. In 2632, 2633. In 2634, 2635. In 2636, 2637. In 2638, 2639. In 2640, 2641. In 2642, 2643. In 2644, 2645. In 2646, 2647. In 2648, 2649. In 2650, 2651. In 2652, 2653. In 2654, 2655. In 2656, 2657. In 2658, 2659. In 2660, 2661. In 2662, 2663. In 2664, 2665. In 2666, 2667. In 2668, 2669. In 2670, 2671. In 2672, 2673. In 2674, 2675. In 2676, 2677. In 2678, 2679. In 2680, 2681. In 2682, 2683. In 2684, 2685. In 2686, 2687. In 2688, 2689. In 2690, 2691. In 2692, 2693. In 2694, 2695. In 2696, 2697. In 2698, 2699. In 2700, 2701. In 2702, 2703. In 2704, 2705. In 2706, 2707. In 2708, 2709. In 2710, 2711. In 2712, 2713. In 2714, 2715. In 2716, 2717. In 2718, 2719. In 2720, 2721. In 2722, 2723. In 2724, 2725. In 2726, 2727. In 2728, 2729. In 2730, 2731. In 2732, 2733. In 2734, 2735. In 2736, 2737. In 2738, 2739. In 2740, 2741. In 2742, 2743. In 2744, 2745. In 2746, 2747. In 2748, 2749. In 2750, 2751. In 2752, 2753. In 2754, 2755. In 2756, 2757. In 2758, 2759. In 2760, 2761. In 2762, 2763. In 2764, 2765. In 2766, 2767. In 2768, 2769. In 2770, 2771. In 2772, 2773. In 2774, 2775. In 2776, 2777. In 2778, 2779. In 2780, 2781. In 2782, 2783. In 2784, 2785. In 2786, 2787. In 2788, 2789. In 2790, 2791. In 2792, 2793. In 2794, 2795. In 2796, 2797. In 2798, 2799. In 2800, 2801. In 2802, 2803. In 2804, 2805. In 2806, 2807. In 2808, 2809. In 2810, 2811. In 2812, 2813. In 2814, 2815. In 2816, 2817. In 2818, 2819. In 2820, 2821. In 2822, 2823. In 2824, 2825. In 2826, 2827. In 2828, 2829. In 2830, 2831. In 2832, 2833. In 2834, 2835. In 2836, 2837. In 2838, 2839. In 2840, 2841. In 2842, 2843. In 2844, 2845. In 2846, 2847. In 2848, 2849. In 2850, 2851. In 2852, 2853. In 2854, 2855. In 2856, 2857. In 2858, 2859. In 2860, 2861. In 2862, 2863. In 2864, 2865. In 2866, 2867. In 2868, 2869. In 2870, 2871. In 2872, 2873. In 2874, 2875. In 2876, 2877. In 2878, 2879. In 2880, 2881. In 2882, 2883. In 2884, 2885. In 2886, 2887. In 2888, 2889. In 2890, 2891. In 2892, 2893. In 2894, 2895. In 2896, 2897. In 2898, 2899. In 2900, 2901. In 2902, 2903. In 2904, 2905. In 2906, 2907. In 2908, 2909. In 2910, 2911. In 2912, 2913. In 2914, 2915. In 2916, 2917. In 2918, 2919. In 2920, 2921. In 2922, 2923. In 2924, 2925. In 2926, 2927. In 2928, 2929. In 2930, 2931. In 2932, 2933. In 2934, 2935. In 2936, 2937. In 2938, 2939. In 2940, 2941. In 2942, 2943. In 2944, 2945. In 2946, 2947. In 2948, 2949. In 2950, 2951. In 2952, 2953. In 2954, 2955. In 2956, 2957. In 2958, 2959. In 2960, 2961. In 2962, 2963. In 2964, 2965. In 2966, 2967. In 2968, 2969. In 2970, 2971. In 2972, 2973. In 2974, 2975. In 2976, 2977. In 2978, 2979. In 2980, 2981. In 2982, 2983. In 2984, 2985. In 2986, 2987. In 2988, 2989. In 2990, 2991. In 2992, 2993. In 2994, 2995. In 2996, 2997. In 2998, 2999. In 3000, 3001. In 3002, 3003. In 3004, 3005. In 3006, 3007. In 3008, 3009. In 3010, 3011. In 3012, 3013. In 3014, 3015. In 3016, 3017. In 3018, 3019. In 3020, 3021. In 3022, 3023. In 3024, 3025. In 3026, 3027. In 3028, 3029. In 3030, 3031. In 3032, 3033. In 3034, 3035. In 3036, 3037. In 3038, 3039. In 3040, 3041. In 3042, 3043. In 3044, 3045. In 3046, 3047. In 3048, 3049. In 3050, 3051. In 3052, 3053. In 3054, 3055. In 3056, 3057. In 3058, 3059. In 3060, 3061. In 3062, 3063. In 3064, 3065. In 3066, 3067. In 3068, 3069. In 3070, 3071. In 3072, 3073. In 3074, 3075. In 3076, 3077. In 3078, 3079. In 3080, 3081. In 3082, 3083. In 3084, 3085. In 3086, 3087. In 3088, 3089. In 3090, 3091. In 3092, 3093. In 3094, 3095. In 3096, 3097. In 3098, 3099. In 3100, 3101. In 3102, 3103. In 3104, 3105. In 3106, 3107. In 3108, 3109. In 3110, 3111. In 3112, 3113. In 3114, 3115. In 3116, 3117. In 3118, 3119. In 3120, 3121. In 3122, 3123. In

108. Commons opposed to the, *ib.* Character of, under Elizabeth, 112. Tyranny of the queen towards them, *ib.* Conference of, with the puritans at Hampton Court, 153. Proceedings of the, against the puritans, 202. Moderate government of, proposed, 260. Proceedings on abolishing, 261. Excluded from parliament, *ib.* Impeachment of the twelve, 272. Restored to their seats in the House of Lords, 352. Their right of voting denied by the Commons, in the case of lord Danby, 392. Discussion of the same, 393. Restored to Scotland after six years' abolition, 598. And to part of their revenues, *ib.*
- Bishops, popish, refuse to officiate at Elizabeth's coronation, 59. Deprived under Elizabeth, 60. Their subsequent treatment, 62.
- Bishopries despoiled in the reformation under Henry VIII., 53.
- Black, one of the ministers of St. Andrew's, summoned before the privy council of Scotland, 596.
- Blackstone (sir William), inadvertent assertion of, 412, 413.
- Blair (sir Adam), impeached for high treason, 412.
- Blount (John), sentenced by the lords to imprisonment and hard labour in Bridewell for life, 583.
- Boleyn (Anne), undoubted innocence of; her indiscretion, 18. Infamous proceedings upon her trial; her levities in discourse brought as charges against her; confessed a pricontract with lord Percy; her marriage with the king annulled, 19. Interested in the reformed faith, 40.
- Bollingbroke (Henry St. John, lord), engaged in correspondence with the Pretender, 546. Impeached of high treason, 547. Character of his writings, 574-575.
- Bolton (lord chancellor), his treatise on the independence of Ireland, 630.
- Bo-night, usage of, 617.
- and coshering, barbarous practice of, 622.
- Bonner (Edmund, bishop of London), imprisoned in the Marshalsea, 61. Denies bishop Horn to be lawfully consecrated, *ib.*
- Books of the reformed religion imported from Germany and Flanders, 47, 48. Books against the queen prohibited by statute, 72.
- Books, restrictions on printing, selling, possessing, and importing, 122, 123.
- Booth (sir George), rises in Cheshire in favour of Charles II., 329.
- Boroughs and burgesses, elections of, under Elizabeth, 138, 139.
- , twenty-two created in the reign of Edward VI., 15. Fourteen added to the number under Mary, *ib.* State of those that return members to parliament, 444. Fourteen created by Edward VI., 445. Twenty-one members for, added by Mary, *ib.* Many more by Elizabeth and James, *ib.*
- , royal, of Scotland, common usage of the, to choose the deputies of other towns as their proxies, 589.
- Bossuet (Jacques), his invective against Cranmer, 54.
- Boulter, primate of Ireland, his great share in the government of Ireland in the reign of George II., 649. His character, *ib.*
- Boyne, splendid victory of the, gained by William III., 646.
- Brady (Dr. Thomas), his writings, 421. On his treatise on boroughs, 447.
- Brehon, customs of, 615.
- Brewers, proclamation concerning, 126.
- Bribery, first precedent for a penalty on, 139. Bacon impeached for, 183.
- Bridgeman (sir Orlando), succeeds Clarendon, 372.
- Brihuega, seven thousand English under Stanhope surrender at, 540.
- Bristol (John, lord Digby, earl of), refusal of summons to, 195.
- Brownists and Barrowists, most fanatic of the puritans, 110. Emigrate to Holland, *ib.* Execution of, *ib.*
- Bruce (Edward), his invasion of Ireland, 623.
- Bucer (Martin), his doctrines concerning the Lord's Supper, 52. Objected to the English vestments of priests, 56.
- Buckingham (Edward Stafford, duke of), his trial and execution under Henry VIII., 16.
- (George Villiers, duke of), his connection with lord Bacon's impeachment, 124.
- Sets aside the protracted match with Spain, 189. Deceit of, 193. His impeachment, 194.
- Buckingham (son of the preceding), one of the cabal ministry, 371. Driven from the king's councils, 382. Administration of, during the reign of Charles II., 430.
- (John Sheffield, duke of), engaged in the interest of the Pretender, 546.
- Bull of Pius V. deposing Elizabeth, 71. Prohibited in England by statute, 72.
- Bullinger (Henry) objected to the English vestments of priests, 56.
- Burehell (Peter), in danger of martial law under Elizabeth, 124.
- Burgage tenure, 444. Opinion of the author concerning ancient, 446, 447.
- Burgesses, debate on non-resident, in the House of Commons, 138, 139.
- Burgundy (duke of), effect of his death on the French succession, 543.
- Burnet (Dr. Gilbert, bishop of Salisbury), denies the answer of Henry VIII. to Luther, 36, note 1. His valuation of the suppressed monasteries, 45. Remark of, on the statute for regulating trials in cases of high treason, 501.
- Burton (Henry), and Edward Bastwick, prosecuted by the Star-chamber, 230.
- Bushell, a jurymen, committed for non-payment of his fine imposed on him in the case of Penn and Mead, 429.

C.

Cabal ministry, account of the 371, 372.

Cabinet council, question of its responsibility, 514. Members of the, answerable for the measures adopted by its consent, *ib.*

Calais, right of election extended to, 445.

Calvin (John), objected to the English vestments of priests, 56.

Calvinism in England, 207. Calvinism, severe and gentle, the, 561.

Cambridge University, law able to protect its rights, 62.

Cambridge University, law able to protect its rights, 62.

Cambridge University, law able to protect its rights, 62.

for popery, 75. 76. His torture justified by lord Burleigh, 77, 78.

Canon laws, a new series drawn up, 55.

Canons, ecclesiastical, new code of, under James I., 156. Defending the king's absolute power, 165.

Cartwright (Thomas), founder of the puritans, 94. His character, *ib.* His Admonition, *ib.* His opposition to civil authority in the church, 95. Design of his labours, 96. Summoned before the ecclesiastical commission, 106. Disapproved of the puritan libels, *ib.*

Catherine of Aragon, queen of Henry VIII., his marriage with her, and cause of dislike, 36. Divorce from, 37. Feelings of the nation in her favour, 46.

Catholic religion, presumption of the establishment of, 375. Remarks on James II.'s intention to re-establish, 450, 451.

Catholics, laws of Elizabeth respecting the, chap. iii. 59-86. A proud and obnoxious faction in the reign of Charles I., 283. Natural enemies to peace, *ib.* Promises of Charles II., 358. Loyalty of, *ib.* Charles II.'s bias in favour of, *ib.* Laws against, enforced in Ireland, 634. Claim the re-establishment of their religion, 642. Aim at revoking the act of settlement, 644, 645. Their hopes under Charles II. and James II., 645, 646. Their possessions at the end of the seventeenth century, 647. Severity of the laws against them during the reigns of William III. and Anne, *ib.* Severe penalties imposed upon them, *ib.* Cavaliers, ruined, inadequate relief voted to, 351.

Cecil (William, lord Burleigh), his great talents, 60. His conduct concerning Elizabeth's marriage, 66. Favours her marriage with the archduke Charles, *ib.* Suspected of favouring the house of Suffolk, 68. Memorandum of, concerning the queen of Scots, 70. Pamphlets of, in defence of Elizabeth, 77. Fidelity of his spies on Mary queen of Scots, 79. Continues his severity to the papist, 86. Averse to the severity of Whitgift, 103. His spoliation of church pro-

perty, 112. Project of, for raising money, 126. Interests himself in affairs of private individuals, 127. His policy in doing so, *ib.* Foresight the character of his administration, *ib.*

Celibacy of priests, its origin and evils considered, 52.

Ceremonies, superstitious, abolished in England, 50.

Chambers (Richd.), proceedings against, for refusing to pay customs, 219.

Chancery, origin and power of the court of, 175. Disput on the extent of its jurisdiction, 176. Its abolition voted, 314.

CHARLES I. (king of England), constitution of England under, from 1625 1629, chap. vii. 192-212. Favourable features of his character, 192. Succeeds to the throne in preparations for war, *ib.* Privileges of Parliament infringed by, 194, 195. Determines to dissolve it, *ib.* Demands a loan, and consequent tumult, 196. Arbitrary proceedings of his council, *ib.* Summons a new parliament, 198. His dislike to the petition of right, 199, 200. Answer concerning tonnage and poundage, and prorogues the parliament, 201. His engagement to the Spanish papists when prince of Wales, 208. Conditions for his marriage with the princess Henrietta Maria, 209. View of his third parliament compared with his character, 212. Constitution of England under from 1629-1640, chap. viii. 215-248. Declaration of, after the dissolution, 215. His proclamations, 225. Proceedings against the city, 226. Principal charges against his government, 226, 227. His court, &c., suspected of favouring popery, 237. Attempts to draw him into the Romish church, 239, 240. Aversion to calling a parliament, 245. Vain endeavour to procure a supply from, 246, 247. Dissolved, *ib.* His means for raising money, 248. Summons the council of York, *ib.* Assents to calling a parliament, *ib.* Constitution of England under, from 1640-1649, chap. ix. 249-271. Recovers a portion of his subjects' confidence, 261. His sincerity still

suspected, 263. His attempt to seize members of Parliament, 264. Effects of, on the nation, 265. His sacrifices to the parliament, 269. Nineteen propositions offered to, 270. Powers claimed by, in the nineteen propositions, *ib.* Comparative merits of his contest with the parliament, 270-272. His success in the first part of the civil war, 275. Affair at Brentford injurious to his reputation, 276. His strange promise to the queen, *ib.* Denies the two houses the name of a parliament, 277, 278. Earl of Holland, Bedford, and Clare join, *ib.* Their bad reception, and return to the parliament, *ib.* Yeomanry and trading classes generally against him, 282. Remarks on the strength and resources of the two parties, *ib.* Loses ground during winter, 283. Makes a truce with the rebel catholics, who are beaten at Namptwich, *ib.* Success over Essex in the West, *ib.* Summons the peers and commons to meet at Oxford, *ib.* Vote of parliament summoning him to appear at Westminster, 284. Does not sustain much loss in the west, 286. Death of, at Naseby, 287. Observations on his conduct after his defeat, 287, 288. Surrenders himself to the Scots, *ib.* Reflections on his situation, *ib.* 289. Fidelity to the English church, *ib.* Thinks of escaping, 290. Imprudence of preserving the Queen's letters, which fell into the hands of parliament, *ib.* Disavows the power granted to Glamorgan, 291. Is delivered up to the parliament, 292. Remarks on that event, *ib.* Offers made by the army, 296. Taken by Joyce, 297. Treated with indignity, 297. His ill reception of the proposals of the army at Hampton Court, 297, 298. Escapes from Hampton Court, 299. Declines passing four bills, 300. Placed in solitary confinement, *ib.* Remarks on his trial, 304. Reflections on his execution, character, and government, 304, 305. His innovations in the law of Scotland, 307-300. His promise of grace to the Irish, 312. His perfidy in his execution, 319. State of the

urch in Ireland in the reign of Charles II. (king of England), seeks foreign assistance, 316. Attempts to interest the pope in his favour, *ib.* His court at Brussels, 328. Receives pledges from many friends in England, 329. Hatred of the army to, 332. His restoration considered imminent, early in the year 1660, *ib.* Constitution of the convention parliament greatly in his favour, 333. His declaration from Breda, 340. Proclamation soon after landing, 341. Re-enters on the crown lands, 343. Income settled on, 344. Character of, by opposite parties, 347. Promises to grant liberty of conscience, *ib.* His declaration in favour of a compromise, 349. Violates his promise by the execution of Yane, 351, 352. His desire for the repeal of the triennial act, 353. Violates the spirit of his declarations, 357. Wishes to mitigate the penal laws against the catholics, 358. His inclination toward that mode of faith, *ib.* Publishes a declaration in favour of liberty of conscience, 359. Private life of, 363. Not averse to a commission of inquiry into the public accounts, 365. Solicits money from France, 370. Intigues with France, 372, 373. His desire of absolute power, 373. Complains of the freedom of political conversations, *ib.* Advice of some courtiers to, on the fire of London, 374. Unpopularity of, *ib.* Endeavours to obtain aid from France, *ib.* Desires to testify publicly his adherence to the Romish communion, *ib.* His conference with the duke of York, Clifford, and Arlington, for the advancement of the Catholic faith, 375. His personal hatred to the Dutch, 376. Joins with Louis to subvert Holland, *ib.* Confesses to Louis XIV.'s ambassador the national dislike to French alliance, *ib.* His evasive conduct towards Louis XIV., 377. Hopes of his court, 378. His prerogative opposed by the Commons, 381. Complains to the Lords of the opposition of the Commons, *ib.* Gives way to the public voice about the sus-

pension bill, *ib.* Compelled to make peace with Holland, 383. His attachment to French interests, *ib.* Receives money from France, 385. His secret treaties with France, 389. His insincerity, *ib.* His proposal to Louis XIV. of a league to support Sweden, 390. His death anxiously wished for by the Jesuits, 399. His unsteadiness, 403. His offers in the case of exclusion, 405, 406. Implores the aid of Louis XIV. against his council and parliament, 408. His dissimulation, 409. Consultations against his government begin to be held, 416. His connexion with Louis XIV. broken off, 422. His death, 423. No general infringements of public liberty during his reign, 424. Tyrannical form of his government in Scotland, 602, 603. State of the protestants and catholics in Ireland at his restoration, 643. State, character, and religion of the parties in Ireland at the restoration of, *ib.* His declaration for the settlement of Ireland, *ib.* Claims of the different parties, 643, 644. Not satisfactory to all concerned, 644. Disgusted with the Irish agents, *ib.* Charles V. (emperor of Germany), intercedes for the princess Mary to enjoy her religion, 54. — (archduke of Austria), a suitor for the hand of Elizabeth, 66. Recognised as king of Spain, 538. Elected emperor, 541. Chester, county of, right of election extended to, 445. Chichester (Sir Arthur, lord deputy), his capacity, 636. The great colony of Ulster carried into effect by his means, *ib.* Chieftains (Irish), compelled to defend their lands, 622. Chillingworth (Dr. William), his examination of popery, 240. Effect of the covenant upon his fortunes, 281. Christ Church College, Oxford, endowed by Wolsey from the suppressed monasteries, 42. Church of England, view of, under Henry VIII., Edward VI., and queen Mary, chap. li. 34-58. — ceremonies and liturgy disliked by the reformers, 89.

Proposal for abolishing, 91. Irregularly observed by the clergy, *ib.*

Church of England, its tenets and homilies altered under Edward VI., 49. Liturgy of, chiefly a translation of the Latin rituals, *ib.* Images removed from, 50. Altars taken down and ceremonies abolished in the, *ib.* Principally remodelled by Cranmer, 54. Alterations in the, under Elizabeth, 59. Entirely separated from Rome, 60. Moderate party of, the least numerous under Elizabeth, 97. Attack on, by Strickland, *ib.* Its abuses, *ib.* Articles of, brought before parliament, *ib.*, 93. Innovations meditated in the, 259-261. Parliamentary orders for protecting 347, 348.

— of Scotland, its immense wealth, 592. Wholly changed in character since the restoration of the bishops, 599. In want of a regular liturgy, *ib.* English model not closely followed; consequences of this, *ib.*

— lands restored at the Restoration, 343.

— revenues, spoliation of, in England, 111.

Civil war under Charles I., commencement of, 272. Great danger of, in the reign of Charles II., 411.

Clare (earl of), joins the king, is ill received, and returns to the parliament, 273.

Clarence (Lionel, duke of), parliament held by, at Kilkenny, for reform of abuses, 622.

Clarendon (Edward Hyde, earl of), character of his talents and works, 242. MSS. and interpolation of his history and life, *ib.*, note 2. Imperfections and prejudices of the work, 243. Its solution of, to replace the church in its property at the Restoration, 342. His integrity, 351. Against any concession to the catholics, 358. Averse to some of the clauses in the act of uniformity, 359. His account of the prevailing discontents of his time, 363, note 2. Inveighs against a proviso in a money bill, 365. Opposes the commission of inquiry, *ib.* Clarendon's marriage of his daughter with the duke of York, 366. Decline of his power, *ib.* Suspected of promoting the marriage of Miss Stewart and the duke of Rich-

- mond, 367. His notions of the English constitution, *ib.* Strongly attached to protestant principles, 368. Will not favour the king's designs against the established religion, 367. Coalition against, 368. His loss of the king's favour, *ib.* Severity of his treatment, *ib.* His impeachment, *ib.* Unfit for the government of a free country, *ib.* Articles of his impeachment greatly exaggerated, 369. Fears the hostility of the Commons, *ib.* Charged with effecting the sale of Dunkirk, *ib.* His close connection with France, 370. Advises Charles to solicit money from France, *ib.* His faults as a minister, *ib.* His pusillanimous flight, 371. Banishment, *ib.* Justification of it, *ib.* Severe remark of, on the clergy, 558.
- Clarendon (Henry, earl of), succeeded by Tyreconnel in the government of Ireland, 456.
- Clark (baron of the exchequer), his speech on the royal power, 163.
- Clement VII. (cardinal Julius), pope, his artful conduct towards Henry VIII., 37. Difficulties of deciding on the king's divorce, *ib.* Forced to give sentence against him, *ib.* Probably could not have recovered his authority in England, 39. Last bulls of, in the reign of Henry VIII., *ib.*
- VIII. (pope), favours Arabella Stuart's title to the English crown, 150.
- Clergy, levy on their possessions under Henry VIII., 11. Immunity of the, from civil authority, 35. Compelled to plead their privilege, *ib.* To be branded for felony, *ib.* Benefit of, taken from robbers, &c., with exemptions, *ib.* Their privileges tried and defeated, *ib.* Popular opposition to the, *ib.* Attacked in the House of Commons, 38. Convicted of praemunire, *ib.* Petition the king for mercy, and acknowledge him supreme head of the church, *ib.* Cause of their dislike of the king's divorce, 40. Unwilling to quit the catholic church, *ib.* Jealousy excited by their wealth, 41. Subdued by a papal bull from Rome, and the dissolution of monasteries, 47. Dramatic satire on the, 48. Their answers to libels against them, 49. Their importance aided by the Latin ritual, *ib.* Their celibacy abolished by statute, 52. Conciliated by this measure, *ib.* Conforming, but averse to the innovations of the Reformation, 53. Expelled from their cures by Queen Mary for having married, 56. Protestant, emigration of, to Germany, 89. Division of, on the church service, *ib.* Marriage of, disapproved by Elizabeth, 90. Her injunctions concerning it, and illegitimacy of their children, *ib.* Their irregular observance of church ceremonies, 91. Archbishop Parker's orders for their discipline, 92. The puritan, advised not to separate from the church of England, 93. Inefficiency and ignorance of, in the English church, 94. Endeavours to supply their deficiency by meetings called prophesyings, 100. *Ex officio* oath given to the, 103. Support the doctrine of absolute power in the king, 165. To promote their own authority, *ib.* Deprived for refusing to read the 'Book of Sports,' 236. Oath imposed on the, by the convocation, 259. Episcopal, restored to their benefices at the Restoration, 348. National outcry against the catholics raised by the, 401. Refuse the oath of allegiance to William and Mary, 481. Their Jacobite principles, 507. Presbyterian, of Scotland, three hundred and fifty ejected from their benefices, 603. Of Ireland, their state, 628.
- Cleves and Jullers, disputed succession in the duchies of, 169.
- Clifford (sir Thomas), one of the Cabal ministry, 371.
- (Thomas), lord treasurer, obliged to retire, 381.
- Cloths, impositions on, without consent of parliament, 162.
- Coffee-houses, proclamation for shutting up, 427.
- Coko (sir Edward), his defection from the court, and summary of his character, 170. His defence of laws, *ib.* His report concerning arbitrary proclamation, 171. His sentiment on benevolence, 174. Objects to the privatey concerning with judges, 175. Opposes the extended jurisdiction of the court of chancery, 176, 177. His defence of the twelve judges, 178. Suspension, restoration, and subsequent life and character, 179. His explanation of the law regarding the king's prerogative, 453. His timid judgment in the law of treason, 528.
- Coleman (Edward), remarkable confession of, 388. Seizure of his letters, 398, 399.
- Colepepper (lord), dictatorial style of his letters to Charles I., 290.
- (Mr.), ordered into custody of the serjeant at arms for presenting the Kentish petition, 580.
- College (—), gross inquiry practised on his trial, 473.
- Commendam, royal power of granting, disputed, 177.
- Commerce, its stagnation in the reign of William III., 492.
- Commission of public accounts, 365, 366.
- of divines revise the liturgy, 508.
- Commitments for breach of privilege, 578, 579.
- Committee of secrecy appointed after the resignation of sir Robert Walpole, 567.
- Commonality, ridings of the, highly dangerous, 26. In Cornwall, *ib.* In consequence of Wolsey's taxation, *ib.* Simultaneous in several counties, *ib.*
- Commoners of England, ancient extent of the, 4.
- Common council, two acts of the, considered as sufficient misdemeanours to warrant a forfeiture of the charter of the city of London, 415.
- Common-law right of election, 447.
- Commons of Ireland, their remonstrance of the long parliament of England, 447.
- , House of, projects libels from the lords, 24. Two witnesses required by the, in treason, *ib.* Rejects a bill for attacking Tynwald, bishop of Durham, *ib.* Unwilling to coincide with court measures, *ib.* Increased weight of, 75. Persons belonging to the court elected as knights of shires, *ib.* Persons in the form a larger part of the, *ib.* Oath of supremacy imposed on the, 60. Irish at that queen's death and marry, 67. Allowed to be so to settle the cause of 63. Puritanical

Elizabeth against the queen of Scots, 72. Against the papists, 74, 75. Papists excluded from, and chiefly puritanical, 97. Articles of the church examined by the, *ib.*, 98. Dissatisfied with the church, 107. Articles, &c., for reformation, prepared by the, 108. Character of, under Elizabeth, *ib.* Its disposition and duties, 127, 128. Imperfection of early parliamentary history, *ib.* More copious under Elizabeth, *ib.* Dispute of, with the queen on the succession, 129, 130. Mr. Yelverton's defence of its privileges, 134. Vainly interferes in the reformation of ecclesiastical abuses, *ib.* First complaint on abuses in her government, 132. Proceedings concerning queen Mary, *ib.* Restricted as to bills on religious matters, *ib.* Its privileges defended by Peter Wentworth, 133. Examines him, &c., on his speech, *ib.* Puritanical measures of reform in, 134. Members of the, imprisoned, 135. Triumphant debate of on monopolies, 146, 137. Subsidies solicited from the, *ib.* General view of its members under Elizabeth, 137, 138. Increased by her, *ib.* Influence of the crown in, *ib.* Bill against non-resident burgesses in, *ib.*, 139. Exemption of, from arrest during session claimed by, *ib.* Power of committal for contempt, &c., 141. Right of expulsion and determining its own elections, 142, 143. Privileges of, concerning money bills, 144. Debate on the election of Goodwin and Fortescue, 155. Proceedings of, on the arrest of sir Thomas Shirley, *ib.*, 156. Remonstrances of, against grievances, *ib.* Proceedings of, on purveyance, 157. Temper of the, concerning grants of money, *ib.* Vindication of its privileges to the king, 158. Proceedings of, on the design of an union with Scotland, 159. Continual bickerings of, with the king, *ib.*, 160. Proceedings of, concerning Spanish grievances, 161. Debate and remonstrance on imposition of James I., 164, 165. Grievances brought forward by, to be redressed, 167. Complaint of, against proclama-

tions, *ib.* Negotiation with the king for giving up feudal tenures, *ib.* Dissolution of parliament, 168. Customs again disputed in the, 173. Parliament dissolved without a bill passing, *ib.* Proceedings against Montpelier, 182. Against lord Bacon, 183. Against Floyd, 184, 185. Lords disagree to titles assumed by the, *ib.* Proceedings of, for reformation, 185. Sudden adjournment of, by the king, and unanimous protestation, *ib.* Meets and debates on a grant for the German war, *ib.*, 186. Petition and remonstrances against popery, *ib.* King's letter on, to the speaker, *ib.* Petition in reply, *ib.*, 187. Debate and protestation in consequence of the king's answer, *ib.* Adjourned and dissolved, 188. Subsidies voted by the, 189. Summary of its proceedings under James I., 190, 191. First one of Charles I., 193. Penurious measures and dissolution of, *ib.* Ill temper of, continued in the second, *ib.* Dissolution of, 195. A new parliament summoned, 198. Proceedings of, on the petition of right, 199, 200. Disputes the king's right to tonnage and poundage, 201. Prorogued, *ib.* Assembled again and dissolved, *ib.* Religious disputes commenced by, *ib.* Proceedings on bill for observance of Sunday, 204. Remonstrates against Arminianism and popery, 206. View of the third parliament of Charles I., 212. The king's declaration after its dissolution, 215. Members of it committed and proceeded against, *ib.*, 216. Parliament of 1640 summoned, 246. Confer upon grievances, 246. Opposition of, to ship-money, *ib.* Dissolution of, 247. Desire of the nation for a parliament, 248. The long parliament convoked, *ib.* (See Long Parliament.) Attempt to seize five members of the, 264. Proceedings on the militia question, 269. Estimate of the dispute between Charles I. and the parliament, 270-272. Faults of, in the contest, 271, 272. Resolve to disband part of the army, 296. Form schemes for getting rid of Cromwell, *ib.*

Vote not to alter the fundamental government, 300, 301. Restore eleven members to their seats, *ib.* Large body of new members admitted, 302. Favourable to the army, 303. Resolution of, against any further addresses to the king, *ib.* Lords agree to this vote, *ib.* Observations on the members who sat on the trial of Charles, 304. Members do not much exceed one hundred, 312. Retain great part of the executive government, *ib.* Charges of injustice against, *ib.* Vote for their own dissolution, 313. Give offence to the republicans, *ib.* Their faults aggravated by Cromwell, *ib.* Question the protector's authority, 315. Agree with the Lords, on the restoration, that the government ought to be in King, Lords, and Commons, 336. Pass several bills of importance, 337. Prepare a bill for restoring ministers, 348. Object to the scheme of indulgence, 360. Establish two important principles with regard to taxation, 364. Appoint a committee to inspect accounts and nominate commissioners, with full powers of inquiring into public accounts, 365. Extraordinary powers of, *ib.* Important privilege of right of impeachment established, 371. Address of, to Charles II. about disbanding the army, 374. Not unfriendly to the court, 379. The court loses the confidence of, *ib.* Testify their sense of public grievances, 384. Strongly adverse to France and popery, *ib.* Connexion of the popular party with France, 385. Many leaders of the opposition receive money from France, 387. Impeach lord Danby, 390. Culpable violence of the, 392. Deny the right of the bishops to vote, *ib.*, 393. Remarks on the jurisdiction of, *ib.*, 394. Take Thompson, Cann, and others, into custody, 410. Their impeachment of Fitzharris, and their right to impeach disseised, 411. Its dispute with, and resistance to, the Lords, 433-435. Its proceedings in the case of Skinner and the East India Company, 435, 436. Its proceedings in the case of Shirley and Fagg, 437. Its violent dispute with

- the Lords, *ib.*, 438. Its exclusive right as to money bills, *ib.* Its originating power of taxation, 439. Its state from the earliest records, 443. Its numbers from Edward I. to Henry VIII., and unequal representation, *ib.*, 444. Accession of its members not derived from popular principle, 445. Address of, to James II., concerning unqualified officers, 453. Its augmented authority, 487. Its true motive for limiting the revenue, 486. Its jealousy of a standing army, 494. Its conduct with regard to the Irish forfeitures, 495, 496. Special committee to inquire into the miscarriages of the war in Ireland, 497. Power of the, to direct a prosecution by the attorney-general, for offences of a public nature, 582.
- Commonwealth, engagement to live faithful to the, taken with great reluctance, 310.
- Companies, chartered, established in evasion of the statute of monopolies, 220. Revoked, 221.
- Compositions for knighthood, 220. Taken away, 252.
- Comprehension, bill of, clause proposed in the, for changing the oaths of supremacy and allegiance, rejected, 507.
- Confession, auricular, 50.
- Confessions extorted by torture in Scotland, 603.
- Confirmatio chartarum, statute of, 162. Cited in the case of Hampden, 223.
- Conformity, proclamation for, by king James I., 154.
- , bill to prevent occasional, rejected by the Lords, 559.
- Connaught, province of, infamously declared forfeited, 633. Inquisition held in each county of, by Strafford, 640.
- Consecration of churches, 237.
- Conspiracy supposed to be concerted by the Jesuits at St. Omer, 399.
- , to levy war against the king's person, may be given in evidence as an overt act of treason, 526. Not receivable to the interpretation of the statute, *ib.* First instance of this interpretation, *ib.* Confirmed in Harding's case, *ib.* For an invasion from Spain, 551.
- Constitution of England from Henry III. to Mary I., p. 1. 1-32. Under James I., chap. vi. 149-191. Under Charles I., chap. vii. 1625-29, 192-212. chap. viii. 1629-40, 215-248. chap. ix. 1640-42, 249-273. From the commencement of the Civil War to the Restoration, ch. x. 274-338. From the Restoration to the death of Charles II., chaps. xi. xii. xiii. 339-447. From the accession of James II. to the Revolution, chap. xiv. 448-476. Under William III., chap. xv. 477-521. Under Queen Anne, and George I. and II., chap. xvi. 520-577. Design of a party to change, 503. Nothing so destructive to, as the exclusion of the electoral body from their franchises, 416. Original, highly aristocratical, 434. Improvements in the, under William III., 499.
- Constitution, forms of the English, established in Ireland, 618.
- Constitutional law, important discussions on the, in the case of lord Danby, 391.
- Constructive treason, first case of, 526. Confirmed in Harclay's case, *ib.* Its great latitude, *ib.*, 503. Confirmed and rendered perpetual by 36 and 57 George III., 526.
- Consuetudination, Luther's doctrine, so called, 51.
- Controversy between the episcopal and presbyterian churches of Scotland, 593. 594.
- Convicticles, act against, 361. Its severity, *ib.*
- Convention parliament, the, proceedings of, 340. Dissolved, 350. Convention of 1688, proceedings of the, 471. Question of the best and safest way to preserve the religion and laws of the kingdom, 472. Conference between the Lords and Commons, *ib.* House of Lords give way to the Commons, 474. Summary of its proceedings, 475. Its impolicy in not extending the act of toleration to the catholics, 597.
- Convicts, inferior, suppressed, 43. Bills of their insurrectionary suppression, 44-45. Excellence of several at the dissolution, 44.
- Convocation (thence off), to be advised with in ecclesiastical matters, 597.
- , of the province of Canterbury, its history, 553-572. Commons refer to the, 572. It is referred to the Lords, 572.
- ib.* Its aims to assimilate its. If to the House of Commons, 557. Finally pronounced in 1117, *ib.*
- Cope (Mr.), his measures for ecclesiastical reform in the House of Commons, 134. Committed to the Tower, 135.
- Coronation oath, dispute on its meaning and construction, 270.
- Corporate property, more open than private to alienation, 44.
- Corporation act, 353. Severely affects the presbyterian party, *ib.*
- Corporations, informations brought against several, 415. Forfeiture of their charters, 116. Receive new ones, *ib.* Freeman of, primary franchise attached to the, 447. Their forfeiture and regrant under restrictions, 449. New modelling of the, 459. Bill for restoring particular classes in, 483.
- Cosbery, custom of, in Ireland, 617, 623.
- Council of State, under the commonwealth, consisted principally of presbyterians, 333.
- Court, Inns of, examined, concerning religion, 73.
- , of supremacy, commenced for, in 15-3, 103.
- , of Charles II., wicked and artful policy of, to secure himself from suspicion of popery, 414.
- Courts of law, the three, under the Plantagenets, how constituted, 4.
- , inferior, under the Plantagenets, county courts, his dead courts, minor courts, their influence, 5.
- , of Star-chamber, origin and powers of, 23, 24. (See Star-chamber.)
- , ecclesiastical, appointed to the, 109.
- Covenant, between the king and his subjects concerning the, 260. Particulars of the, 260. What of jurisdiction to Long, 261, 262. The particular of the church and clergy of each by, 262. What of the church and clergy of each by, 262. What of the church and clergy of each by, 262. What of the church and clergy of each by, 262.

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Forbes (sir David), fined by the Star-chamber, 229.

Forest laws, enforcement and oppression of, under Charles I., 220, and note 2. Extent of forests fixed by act of parliament, 252.

Forfeiture of the charter of London, 414, 415. Observations on the proceedings on, *ib.*

Fortescue (sir John), question of his election, 155.

Fosterine, Irish custom of, 621. Severe penalty against, 622.

Fox (Edward, bishop of Hereford), excites Wolsey, to reform the monasteries, 42.

Fox (right honourable C. J.), his doubt whether James II. aimed at subverting the protestant establishment examined, 450, 451.

France, its government despotic when compared with that of England, 145. Public misery of, 542.

Franchise, elective, taken away from the catholics of Ireland, 648.

Frankfort, divisions of the protestants at, 89.

Freeholder, privileges of the English, 226. Under the Saxons, bound to defend the nation, 267.

French government, moderation of the, at the treaty of Aix la-Chapelle, 573.

Fresh severities against dissenters, 378.

Fuller (Mr.), imprisonment of, by the Star-chamber, 179.

G.

Gardiner (Stephen, bishop of Winchester), a supporter of the popish party, 49. In disgrace at the death of Henry VIII., *ib.*

Garraway and Lee take money from the court for sottening votes, 384.

Garrison, ancient military, force kept in, 266.

Gauden (Dr. John), the supposed author of Icon Basilike, 303.

Gavelkind, tenure of Irish, explained, 615. Determined to be yeld, 634.

Gentry, or landowners, under the Plantagenets, without any exclusive privilege, 4. Disorderly state of, under Henry VI. and Edward IV., 6. Of the north of England, their turbulent spirit, 29. Perurbed by Henry VIII.

and the court of Star-chamber, *ib.* 30. Why inclined to the Reformation, 40. Of England, became great under the Tudors, deriving their estates from the suppressed monasteries, 46.

George I. (king of England), his accession to the crown, 548. Chooses a whig ministry, *ib.* Great disaffection in the kingdom, 549. Causes of his unpopularity, 554. Incapable of speaking English, trusted his ministers with the management of the kingdom, 571.

— and George II. (kings of England), their personal authority at the lowest point, 572.

Geraldines, family of the, restored, 627.

Gerard (Mr.), executed for plotting to kill Cromwell, 317.

Germany, less prepared for a religious reformation than England, 34. Books of the reformed religion printed in, 47. Cellbacy of priests rejected by the protestants of, 52. Troops of, sent to quell commotions, 53 and note 6.

War with Commons' grant for, in 1621, 186.

Gertruydenburg, conferences broken off and renewed at, 539.

Glamorgan (Edward Somerset, earl of), discovery of a secret treaty between him and the Irish catholics, 291. Certainty of, confirmed by Dr. Birch, *ib.*

Godfrey (sir Edmundbury), his very extraordinary death, 199.

Not satisfactorily accounted for, 400, and note 4.

Goodolphin (Sidney, earl of), preserves a secret connexion with the court of James, 545.

His partiality to the Stuart cause suspected, *ib.*

Godstow nunnery interdicted for at the dissolution, 44.

Gold coin, Dutch merchants fined for exporting, 174.

Goodwin (sir Francis), question of his election, 155.

Gossipred, severe penalty against, 622.

Government of England, ancient form of, a limited monarchy, 1. 144-145. Erroneously asserted to have been absolute, *ib.* Con-

sultations against the, of Charles II. begin to be held, 416. Difficult problem in the practical science of, 472.

Always a monarchy limited

by law, 475. Its predominant character aristocratic, 476. New and revolutionary remarks on, 431, 4. Locke and Montesquieu, theory of their names, that subject, 560. Study to promote distinguished men, *ib.* Executive, deprived of so much power the Revolution as to be supposed, 569. Arbitrary, Scotland, 601.

Government, Irish, its zeal in the reformation of abuses, 622. Of Ireland, benevolent scheme in the, 634.

Governors of districts in Scotland take the title of earl, 587.

Gowrie (earl of), and his brother, executed for conspiracy, 611, and note 2.

Graham and Barton, soldiers to the treasury, committed to the Tower by the council and afterwards put in custody of the serjeant by the Commons, 582.

Granville (lord), favourite minister of George II., 572. Bickering between him and the Pelhams, *ib.* 571.

Gregory XIII., his explanation of the bull of Pius V., 56.

Grey (lady Catherine), presumptive heiress to the English throne at the beginning of Elizabeth's reign, 65, 129. Proceedings of the queen against her, 67, 68.

Her party deprived of influence by their laudable connections, 61. Legitimacy of her marriage and issue, 132. Present representatives of this claim, *ib.*

— (Leonard, lord deputy of Ireland), defeats the Irish, 627.

— (sir Arthur), his severity in the government of Ireland, 611.

Grindal (Edmund, archbishop of Canterbury), protects the puritans, 99. Forbids their meetings, called "paraphrases," 101. His consequent sequestration, *ib.*

Gunpowder Plot, Irish conspirators in the, 607.

H.

Habeas Corpus, trial in the case of, 140, 141, 142. Act of 1704 went up to the House of Lords, 416. No right of appeal issued by the act, 416. Power of the court to remove a

pleas to issue writs of, *ib.*
 Particulars of the, *ib.*, 432.
 Its effectual remedies, *ib.*, 433.
 Sale (sir Matthew), and other judges, decide on the illegality of fining juries, 428.
 His timid judgment in cases of treason, 528.
 Sales (John), his defence of lady Catherine Grey, 68.
 His character and *Treatise on Schism*, 241, 242.
 — (sir Edward), case of, 454, 455.
 Saltilax (George Saville, marquis of), declaration of rights, presented by, to the prince of Orange, 478. Retires from power, 482.
 Sall (Arthur), proceedings of parliament against, 142.
 famous case of, the first precedent of the Commons punishing one of their own members, *ib.*
 — (Edward), his *Chronicle* contains the best account of the events of the reign of Henry VIII., 11, *note* 6.
 Samilton (James, duke of), engaged in the interest of the Pretender, 546. Killed in a duel, *ib.*
 Sampden (John), levy on, for ship-money, 222, and *note* 3.
 Trial of, for refusing payment, 222, 225.
 Hampton Court conference with the puritans, 153.
 Hanover, settlement of the crown on the house of, 510.
 Limitations of the prerogative contained in it, 511.
 Remarkable cause of the fourth remedial article, 513.
 —, the house of, spoken of with contempt, 547.
 Acquires the duchies of Bremen and Verden in 1716, 554, and *note* 6.
 Hanoverian succession in danger from the ministry of queen Anne, 547.
 Harcourt (Simon, lord Chancellor), engaged in the interest of the Pretender, 546.
 Harding's case, constructive treason in, 526.
 Hardwicke (lord chief justice), his arguments in opposing a bill to prevent smuggling, 569.
 Harley (sir Robert), puritan spoliations of, 261, and *note* 1.
 Hatton (sir Christopher), his lenity towards papists, 86.
 An enemy to the puritans, 102.
 His spoliation of church property, 112.
 Attempt to assassinate, 124.
 His forest amercement, 220.

Heath (Robert), attorney-general, his speech on the case of habeas corpus, 198.
 Denies the criminal jurisdiction of parliament, 216.
 Henrietta Maria (queen of Charles I.), conditions of her marriage with him, 269.
 Sent from England with the crown jewels, 271.
 Charles I.'s strange promise not to make any peace without her mediation, 276.
 Impeachment of, for high treason, the most odious act of the long parliament, 277.
 Her conduct, 288.
 And advice to Charles, *ib.*
 Writes several imperious letters to the king, 289.
 Forbids him to think of escaping, 290.
 Ill conduct of, *ib.*
 Abandons all regard to English interest, *ib.*
 Plan formed by, to deliver Jersey up to France, *ib.*
 Power given her by the king to treat with the catholics, *ib.*
 Henry II. (king of England), institutes itinerant justices, 5.
 Invasion of Ireland by, 617.
 — VI., clerical law improved under, 35.
 — VII. (king of England), state of the kingdom at his accession, 6.
 Parliament called by, not a servile one, *ib.*
 Proceedings for securing the crown to his posterity, *ib.*
 His marriage, and vigilance in guarding the crown, made his reign reputable but not tranquil, *ib.*
 Statute of the 11th of, concerning the duty of allegiance, *ib.*, 7.
 Did not much increase the power of the crown, *ib.*
 Laws enacted by, over-rated by lord Bacon, 8.
 His mode of taxation, *ib.*
 Subsidies being unpopular, he has recourse to benevolence, *ib.*
 And to amercements and forfeitures, 9.
 Made a profit of all offices, even bishoprics, 10.
 Wealth amassed by him soon dissipated by his son, *ib.*
 Council court formed by, existing at the fall of Wolsey, 30.
 Not that of Star-chamber, nor maintainable by his act, *ib.*, *note* 19.
 His fatal suspicion, 31.
 Enacts the branding of clerks convicted of felony, 35.
 Probable policy of, in the marriage of Henry VIII., 36.
 Low point of his authority over Ireland, 624.
 Continued to the four counties of the English pale, *ib.*
 — VIII., his foreign policy,

10. His profusion and love of magnificence, *ib.*
 Acts passed by, to conciliate the discontents excited by his father, *ib.*
 Extensive subsidies demanded of parliament by him, *ib.*
 Exaction by mis-called benevolence, in 1525, 11, 12.
 Instance of his fierceness of temper, 16, 17, 18.
 Reflections on his government and character, 20.
 Did not conciliate his people's affections, *ib.*
 Was open and generous, but his foreign politics not sagacious, *ib.*
 Memory revered on account of the Reformation, *ib.*
 Was uniformly successful in his wars, *ib.*
 Suppresses the turbulence of the northern nobility, &c., 29, 30.
 Star-chamber in full power under, 30, *note* 10.
 Fierce and lavish effects of his wayward humour, 31.
 Religious contests the chief support of his authority, *ib.*
 Lollards burnt under, 34.
 Controversial answer to Luther, 36.
 Ability of, for religious dispute, *ib.*, *note* 1.
 Apparent attachment of, to the Romish church, 36.
 His marriage and aversion to Catherine of Aragon, *ib.*
 Time of his marriage with Anne Boleyn, 37.
 Throws off its authority on receiving the papal sentence, *ib.*
 His previous measures preparatory to doing so, 38.
 Takes away the first fruits from Rome, 39.
 Becomes supreme head of the English church, *ib.*
 Delays his separation from Queen Catherine, from the temper of the nation, 40.
 Proceeds in the Reformation from policy and disposition, 41.
 The history of his time written with partiality, *ib.*, *note* 3.
 His alienation of their lands beneficial to England, 44.
 Should have diverted rather than have confiscated their revenues, *ib.*
 Doubtful state of his religious doctrines, and his inconsistent cruelty in consequence, 47.
 Sanctions the principles of Luther, *ib.*
 Bad policy of his persecutions, 48.
 Prohibits the reading of Tindal's Bible, *ib.*
 State of religion at his death, 49.
 His law on the celibacy.
 His provision to Supports their ex-

142. His will disposing of the succession, 151. Doubt concerning the signature of it, *ib.* Account of his death, and of that instrument, *ib.* Disregarded on the accession of James, 153. Institution of the council of the north by, 233.
- Heury (prince of Wales, son of James I.), his death, suspicion concerning it, 181. Design of marrying him to the infant, 182.
- Herbert (chief justice), his judgment in the case of sir Edward Hales, 454. Remarks on his decision, 455.
- Hertford (Edward Seymour, earl of), his private marriage with lady Grey, 67. Imprisonment, *ib.* Inquiry into the legitimacy of his issue, 152.
- Hesham Abbey interceded for at the dissolution, 44.
- Heylin (Dr. Peter), his conduct towards Pryune, 230.
- High commission, court of, 1583. Its powerful nature, 103. Act for abolishing the, 251.
- High and low churchmen, their origin and description, 508, note 3, 553.
- Histrionastix*, volume of lectures so called, 230.
- Hoadley (Benjamin, bishop of Bangor), attacked by the convocation, 557. His principles, *ib.*
- Holland (Henry Rich, earl of), chief justice in eyre, 220. Joins the king at Oxford, 278. Is badly received, *ib.* Returns to the parliament, *ib.*
- , war with, great expense of the, 373. Charles II. receives large sums from France during the, 377. Infamy of the, 379.
- Holles (Denzil), committal and proceedings against, 215, 216.
- Hollingshead (Raphael), his description of the miserable state of Ireland, 631.
- Holls (lord), sincerely patriotic in his clandestine intercourse with France, 386.
- Holt (chief justice), his opinion concerning the power of the Commons to commit, 584.
- Horatius, duty of non-resistance maintained in the, 210.
- Hooker (Richard), excellence of his *Ecclesiastical Polity*, 110, 111. Character and force of his argument, 114. Relative perfection of the various books, *ib.*, 115. Imperfections of, *ib.* Justice and liberality of, in his views of government, *ib.* Interpolations in the posthumous books considered, 116. His view of the national constitution and monarchy, *ib.* Dangerous view of the connexion of church and state, *ib.*
- Hopes of the pre-byterians from Charles II., 347.
- Howard (Catherine), her execution, 19.
- (Sir Robert), and Sir R. Temple, become placemen, 384.
- (lord, of Eserick), his perfidy caused the deaths of Russell and Essex, 417.
- Hume (David), his account of Glamorgan's commission, 291.
- Hun (Richard), effects of his death, 35.
- Huntingdon (George Hastings, earl of), his title to the English crown, 149.
- Hutchinson (colonel), died in confinement 369.
- Hyde (sir Nicholas, chief justice), his speech on the trial of habeas corpus, 198.
- and Keeling (chief justices), exercise a pretended power with regard to juries, 428.

I.

- Icon Basiliké, account of, 303.
- Images, destruction of, under Edward VI., 50.
- Impeachment, parliamentary character and instances of, 183, 189. Question on the king's right of pardon in cases of, 393. Decided by the act of settlement against the king's right, 394. Abatement of, by dissolution of parliament, 395-397. Decided in the case of Hastings, 398. Of Commons for treason, constitutional, 411, 412.
- Impositions on merchandise without consent of parliament, 162, 163. Argument on, 163-164. Again disputed in the House of Commons, 173.
- Impressment, statute restraining, 252.
- Imprisonment, illegal, banished from the English constitution, 121. Flagrant instances of, under Elizabeth, 121-143. Remonstrances of the judges against, *ib.*
- Incident (transaction in Scot-

- land so called), almost excited by the, 261.
- Independence of judges, 513. This important provision owing to the act of settlement, *ib.*
- Independent party (the), their first great victory the 6th denying ordinance, 287. New model of the army, *ib.* First bring forward principles of toleration, 295.
- Independents, liability of the, to severe laws, 110. Origin of the name, *ib.* Emigrate to Holland, *ib.* And to America, 236.
- Jun's, father, the biographer of James II., extract from, 459.
- Institution of a Christian Man, 1537, reformed doctrines contained in, by authority of Henry VIII., 47.
- Insurgents in the rebellion of 1641, their success, 642. Claim the re-establishment of the Catholic religion, *ib.*
- Insurrections on account of forced loans, 11. On the king's supremacy, 17. Concerning enclosure, 8, 51.
- Intrigues of Charles II. with France, 372, 373.
- Ireland, mismanagement of the affairs of, 382. Ancient state of, 611. Necessity of understanding the state of society at the time of Henry II's invasion, *ib.* Its division, 614. King of, how chosen, *ib.* Its customs, *ib.* Its state of society there, 615. State of the clergy in, 616. Ancient government of, nearly annihilated, *ib.* Its reduction by Henry II., 617. Its greatest part divided among English families, *ib.* The natives of, expelled, 618. English laws established in, *ib.* Natives of, claim protection from the throne, 619. Its disorderly state, 621. Miseries of the natives, 622. Its hostility to the government, 623. Its north and southern, and part of the southern, lost to the crown of England, *ib.* 624. Its conduct during the contest between the houses of York and Lancaster, 625. Royal authority over it restored under Henry VIII., 626. Extent to the dignity of a kingdom, *ib.* Extent to which illegal in, 627. Hostility of the people to the catholic hierarchy, 628. Its state not to quail, 629, 630.

laws established throughout, 1. Scheme for perfecting his conquest, 635. Edmund Spenser, his account of the state of Ireland, *ib.* Constitution of its parliament, 637. Its voluntary contribution for certain graces, 638. Free trade to be admitted, *ib.*, 639. Rebellion of 1640, 641. Its misgovernment at all times, *ib.* Its Irish partition, 643. Declaration for its settlement by Charles II., *ib.* Different parties in, their various claims, 643, 644. Declaration not satisfactory, *ib.* Complaints of the Irish, *ib.* Natural bias of Charles II. to the religion of, *ib.* Unpopularity of the Duke of Ormond with the Irish Catholics, 645. Lord Berkeley's administration in 1670, *ib.* The civil offices of, filled with catholics in the reign of James II., 646. Civil war of, in 1689, *ib.* Treaty of Limerick *ib.* Oath of supremacy imposed on the parliament of, 648. Three nations and their religions in, 649. Its dependence on the English parliament, 650, 651. Rising spirit of independence in, *ib.*, 652. Jealousy and discontent of the natives of, against the English government *ib.* Irish agents for the settlement of Ireland against Charles II., 644.

— catholics, penal laws against, 647.
— forfeitures resumed, 495, 496.
— lords surrender their estates to the crown, 634.
— natives, origin of the, 613. Their character, 615, 616. Their ancient condition, *ib.* Claim the protection of the throne, 619. Not equitably treated in the settlement of the colonies, *ib.*, 620. Disaffected, their connection with Spain, 641.

J.

Jacobite faction, origin of the, 481. Party rendered more formidable by the faults of government, 562. Their strength, 563. Strength of, in Scotland, in the reigns of George I. and II., 611, 612. Jacobites, intrigues of the, 544. Their disaffected clergy send forth libels, *ib.* Decline of the, 561.

Jacobitism of the ministers of queen Anne, 546, 547. Its general decline, 611, 612.

JAMES I. (King of England), view of the English constitution under, chap. vi, 149-191. His quiet accession, notwithstanding the numerous titles to the crown, 149. His and the other claims considered, *ib.*, 152. Elizabeth's intrigues against, 150. Four proofs against his title, 151. His assertion for hereditary right, 152-158. His early unpopularity, *ib.* His contempt for Elizabeth, *ib.* The Millenary petition presented to, *ib.* His conduct to the puritans at the Hampton Court conference, *ib.* Proclamation for conformity, 154. Employed in publishing his maxims on the power of princes, *ib.* His first parliament summoned by irregular proclamation, *ib.* Dispute with, on the election of Fortescue and Goodwin, 155. Artifice of, towards the commons on a subsidy, 157. Discontent of, at their proceedings, *ib.* His scheme of an union with Scotland, 159. His impolitic partiality for Spain, 160, 161, 181, 188, 189, 208. Duties imposed by, 163, 164. Defects of his character, 168. Foreign politics of England under, 169. His endeavours to raise money by loans, titles, &c., 171, 172. Dissolves the parliament, 173. His letter and conduct to the twelve judges, 177, 178. His unpopularity increased by the circumstances of Arabella Stuart, Overbury, and Raleigh, 180, 181. His probable knowledge of the murder of Overbury, *ib.* Calls a new parliament, 182. His sudden adjournment of it, 185. His letter to the speaker of the Commons on petitions against popery, 186. Reply of, to a second petition, 187. Adjournment, dissolution, and proceedings against members of both houses, 188. Libels against, 189. His declaration of sports, 203. Opposes the Arminian heresy, 205, 206. Suspected of inclination to the papists, *ib.* Answers cardinal Bellarmine, 207. State of papists under, 206-210. His reign the most important in the constitutional history of Ireland, 633.

James II. (king of England), attributes his return to popery to the works of Hooker, 115, note. His schemes of arbitrary power, 448. Issues a proclamation for the payment of customs, 449. His prejudice in favour of the catholic religion, 450. His intention to repeal the *habeas corpus* and test acts, *ib.* Deceived in the disposition of his suit &c., 451. Supported by his brother's party, 452. Prorogues the parliament, *ib.* His scheme for subverting the established religion, 456. Rejects the plan for excluding the prince of Orange, 457. Dissolves the parliament, 459. Attempts to violate the right of electors, *ib.* Solicits votes for repealing the test and penal laws, 460. Expels the fellows from Magdalen college, *ib.* His infatuation, 461. His impolicy, 462. Received 500,000 livres from Louis XIV., *ib.* His coldness to Louis XIV., *ib.* His uncertain policy discussed, *ib.* His character, *ib.* Reflections on his government, 464. Compared with his father, *ib.* Has a numerous army, 466. His sudden flight, 467. His return to London and subsequent flight, 468. Voted against him in the convention, 471. Compassion excited for him by his fall, 480. Large proportion of the Tories engaged to support him, 488. Schemes for his restoration, and conspiracy in his favour, 489. Issues a declaration from St. Germain's, *ib.* Civil offices, courts of justice, and the privy council in Ireland, filled with catholics in the reign of, 646.
— II. (king of Scotland), statute of, to prevent the alienation of the royal domains, 590.
— VI. (king of Scotland), his success in restraining the presbyterians, 596. His aversion to the Scottish presbytery, 598. Forces on the people of Scotland the five articles of Perth, *ib.*
— VII. (king of Scotland), his reign, 605. His cruelties *ib.* Attempts to introduce popery, *ib.* National rejection of him from that kingdom, 606.
Jeffries (judge), violence of 456

- Jenkes, committed by the king in council for a mutinous speech, 470.
- Jenkins (Judge), confined in the Tower by the long parliament, 581.
- Jenner (a baron of the exchequer), committed to the Tower by the council, and afterwards to the custody of the serjeant by the Commons, 582.
- Jermyn (Henry, lord), dictatorial style assumed by him in his letters to Charles I., 299, 299.
- Jesuits, their zeal for the catholic faith, 85.
- Jewell (John, bishop of Salisbury), opposes church ceremonies and habits, 90, 91.
- Jews permitted to settle in England, 347.
- Johnson (Mr. Samuel), error of, with respect to lord Shaftesbury, 502, *note*⁶.
- Joseph (emperor of Germany), his death 541.
- Joyce, seizure of Charles by, 296.
- Judges in the reign of Henry VIII., their opinion that attainders in parliament could not be reversed in a court of law, 17. Privately conferred with, to secure their determination for the crown, 175. The twelve disregard the king's letters for delay of judgment, 177. Their sentiments on ship-money, 222. Sentence in Hampden's case, 225. Account Strafford guilty, 256. Their conduct on the trial of Vane, 352. In the reign of Charles II., their brutal manners and gross injustice, 401. Scroggs, North, and Jones, their conduct, *ib.*, and *note*⁵. Devise various means of subjecting juries to their own direction, 428. Their general behaviour infamous under the Stuarts, 518, 519. Independence of the, *ib.* This important constitutional provision owing to the act of settlement, *ib.* Pemberton and Jones, two late judges, summoned by the commons in the case of Topham, 531. Pows, Gould, and Powell, their opinions concerning the power of the Commons to commit, 534.
- Juries governed by the crown under Elizabeth, 21. Fined for verdicts, 27, 28, 423. Question of the right of, to return a general verdict, 429.
- Jury, trial by, 5.
- Jury, grand, their celebrated ignoramus on the indictment against Shaftesbury, 417.
- Justice, open administration of, the best security of civil liberty in England, 119.
- Courts of, sometimes corrupted and perverted, 121.
- Justices of the peace under the Plantagenets, their jurisdiction, 5. Limitation of their power, 10.
- Juxon (Dr. William, bishop of London), made lord-treasurer, 251.

K.

- Keeling (chief justice), strong resolutions of the Commons against, for fixing juries, 428.
- Kentish petition of 1701, 520.
- Kerns and gallows-glasses, names of mercenary troops in Ireland, 617.
- Kildare (earls of), their great influence in Ireland, 625.
- (Earl of), his son takes up arms, *ib.* Sent prisoner to London, 627. Executed with five of his uncles, *ib.*
- Kilgrew and Delaval, parliamentary inquiry into their conduct, 497.
- King, ancient limitations of his authority in England, 2. Ecclesiastical canons on the absolute power of the, 165. Command of the, cannot sanction an illegal act, 198. His power of commuting, 198-198, 216. Power of the, over the militia considered, 268, 269.
- Kings of England, vote of the Commons against the ecclesiastical prerogative of, 381.
- Their difficulties in the conduct of government, 572. Their comparative power in politics, *ib.* Of Scotland always claim supreme judicial power, 591.
- King's Bench (court of), its order prohibiting the publishing pamphlets, 427. Formed an article of impeachment against Scroggs, *ib.*
- Knight (—), proceedings against, by the University of Oxford, 211.
- Knight's service, tenure of, 265-266. Statutes amending, *ib.*
- Knighthood, conferred by James I., &c., to raise money, 171-172, 220. Compulsory, abolished, 232.
- Knollys (sir Francis), friendly to the puritans, 102. Opposed to episcopacy, 109.

Knox (John), supports the dissenting innovations at Frankfurt, 89. Founder of the Socinian reformation, particularly of the scheme of church polity, 591, 594.

L.

- Lacy, his conquests in Ireland, 617.
- Lambert (general), ambitious views of, 326. A principal actor in expelling the Commons, 327. Character by parliament, *ib.* His character, 330. Sent to Guernsey, 332.
- Landed proprietors, their indignation at the rise of new men, 540.
- Landowners of England, became great under the Tudors, many of the estates acquired from the suppressed monasteries, 46.
- Land-tax, its origin, 492. Its inequality, 493.
- Lands, ancient English laws concerning the franchise, *ib.*, 32, *note*⁴. Crown and church, restoration of, 342, 343. In Ireland, act for the restitution, 641, 644. Its insufficiency, *ib.* Three thousand claimants unjustly cut off from any hope of restitution, 645.
- Latimer (Hugh, bishop of Worcester), introduced for Milverton priory at the dissolution, 41.
- Latin ritual, antiquity and excellence of the, 49.
- Latitudinarian divines, their most conspicuous in their writings in the reign of Charles II., 451.
- Laud (William, archbishop of Canterbury), his talents and character, 251. His correspondence with lord Strafford, 254. Accused of procuring Prynne, &c. His conduct in the church prosecution of the puritans, 256, 256. Preceded a proclamation to the dissenting ministers, *ib.* Intended towards, 257, 257. Unjust with the cardinal, introduced by, 258. Turned against the dissenting ministers, 258. Confined to the Tower, and his good looks lost, 258. Particulars of the charges against him, *ib.* He defends himself with courage and ability, 258. He is introduced the charges against him to legal friends, 258. His trial, 258 and 258.

execution, *ib.* Peers com-
y, *ib.*
derdale (duke of), one of the
thal, 371. Obligated to con-
ne himself to Scotch affairs,
32. Act of the, respecting
the order of king and council
to have the force of law in
Scotland, 602. His tyranny,
53.
w, the ecclesiastical, re-
formed, 55, 56. Less a se-
curity for the civil liberty of
England than the open ad-
ministration of justice, 119
its ordinances for regulating
the press, 122, 123.
ws, severity of, against theft,
5. Of England, no alteration
of, ever attempted without
the consent of parliament,
145. Penal, extension of the,
568. Their gradual progress
and severity, *ib.* Have ex-
cited little attention as they
passed through the houses
of parliament, 569. Several
passed in England to blind
Ireland, 651.
wyers, their jealous dislike
of the ecclesiastical courts,
109.
eicester (Robert Dudley, earl
of), a suitor for the hand of
Elizabeth, 66. Assumes an
interest in the queen, *ib.* 67.
eighton (Alexander), prosecu-
tion of, by the court of Star-
chamber, 229, 230.
elmsler, rebellion of two septs
in, leads to a reduction of
their districts, now called
King's and Queen's counties,
627.
ent, proclamations of Eliza-
beth for observing of, 122.
eslie, his writings, 509. Author
of the 'Rehearsal,' a periodi-
cal paper in favour of the
Jacobites, 544.
L'Estrange (Mr Roger), busi-
ness of licensing books in-
trusted to him, 426.
Levellers, and various sects,
clamour us for the king's
death, 304.
Levies of 1524-5. 11.
Libel, law of, indefinite, 504.
Falsehood not essential to
the law of, 505. Settled
by Mr. Fox's libel bill in
1792, *ib.*
Libels published by the puri-
tans, 105. Against James I.,
189.
Liberty of the subject in the
reign of Henry VIII., 11, 12.
Civil, its securities in Eng-
land, 119. On conscience, de-
claration for, 458. Its motive,
ib. Observations on its effects,

ib. Similar to that published
in Scotland, *ib.* Of the press,
503. Particulars relating to
the, 504.
Licensing acts, 425. Act, par-
ticulars relating to the, 503.
Lichfield (bishopric of), de-
spoiled in the Reformation,
53.
Lincolnc, treaty of, 646. Its
articles, *ib.*
Littleton (lord keeper), carries
away the great seal, 279.
Liturgy, chiefly translated from
the Latin service book, 49.
Prayers for the departed kept
in, 50. Taken out on its first
revisal, *ib.* Amendments of
the English, under Elizabeth,
59. Statute defending, 60.
Revised, 508. The, estab-
lished the distinguishing
marks of the Anglican
church, 509.
Llandaff (bishopric of), de-
spoiled in the Reformation,
53.
Loan, on 'property in 1521-25,
raised by cardinal Wolsey,
11, 12. Remitted to Henry
VII. by parliament, 13. To
Elizabeth, not quite volun-
tary, nor without intima-
tion, 126. Always repaid, *ib.*
Solicited under James I.,
171. Demanded by Charles
I., and conduct of the people
on it, 196. Commital and
trial of several refusing to
contribute, *ib.* Their de-
mand of a habeas corpus, *ib.*
Their right to it debated and
denied, 196-198.
Lollards, the origin of the Pro-
testant church of England,
34. Their reappearance and
character before Luther, *ib.*
London, levies on the city of,
11, 14. Citizens of, inclined
to the Reformation, 40. In-
crease of, prohibited by pro-
clamation, 122. Tumultuous
assemblies of, resigned to
martial law, 124, 125. Re-
monstrates against paying
ship-money, 221. Proclama-
tion against buildings near,
226. Lands in Derry granted
to, *ib.* Corporation of, in-
formation against the, and
forfeiture of their charter,
415. Purchases the continued
enjoyment of its estates at
the expense of its municipal
independence, *ib.*
Long (Thomas), member for
Westbury, pays 4*l.* to the
mayor, &c., for his return in
1571, 139.
— parliament summoned,
243. Different political views

of the, 249. Its measures of
reform, 249-251. Made but
little change from the con-
stitution under the Planta-
genets, 253. Errors of the,
254, 258. Bill of, enacting
that not being dissolved
against their own consent,
ib., 259.

Lord-Lieutenant, institution of
the office of, 268.

Lords Portland, Oxford, Somers,
and Halifax, impeached on
account of the treaties of
partition, 498.

—, House of, cold reception
of the articles on religious
reform prepared by the Com-
mons, 108. Disagreements of
the House of Commons with
the, 144. Impeachment of
lord Latimer at the bar of
the, 183. Sentence of the, on
Mompesson, *ib.* Unable to
withstand the threats of de-
mocracy, 309. Retain their
titles, *ib.* Cromwell's de-
scription of, 322. Commons
desire a conference with the
335. Receive a letter from
Charles II., *ib.* Declare the
government ought to be in
the King, Lords, and Com-
mons, *ib.* Vote to exclude all
who signed the death-warrant
of Charles I. from act of in-
demnity, 341. In the case of
lord Danby, not wrong in
refusing to commit, 392. In-
quiry of the, in cases of ap-
peals, 395. Their judicial
power historically traced,
434. Antiquity of their ulti-
mate jurisdiction, *ib.* Pre-
tensions of the, about the
time of the Restoration, 435.
Their conduct in the case of
Skinner and the East India
Company, 435-436. State of,
under the Tudors and Stuarts,
441. Numbers from 1154 to
1661, *ib.*, 442. And of the
spiritual lords, *ib.* Every
peer of full age entitled to
his writ of summons, 443.
Privilege of voting by proxy,
originally by special per-
mission of the king, *ib.* Pro-
ceedings of the, in the con-
vention of 1688, 471. Dispute
with, about Aylesbury elec-
tion, 580, 581. Spiritual, in
Scotland, choose the temporal
to the number of eight, 600.
Lord's Supper, controversies and
four theories on the, 51, 52.
Louis XIV., his object in the
secret treaty with Charles
II., 375. Mutual distrust
between them, 376. Secret
connexions formed by the

leaders of opposition with, 385. His motives for the same, 386. Secret treaties with Charles, 389. Mistrusts Charles's inclinations, and refuses him the pension stipulated for in the private treaty, *ib.*, 390. Connexion between Charles II. and, broken off, 422. His views in regard to Spain dangerous to the liberties of Europe, 494. Acknowledges the son of James II. as king of England, 522. Makes overtures for negotiations, 538, 539. Exhausted state of his country, 542. ove (Christopher), executed for a conspiracy, 310. Effects of his trial and execution, *ib.* Ludlow (general), and Algernon Sidney, project an insurrection, 368. Lundy (colonel), inquiry into his conduct, 497. Luther (Martin), his doctrines similar to those of Wicliffe, 34. Treatise of, answered by Henry VIII., 36, and *note i.* His rude reply and subsequent letter to the king, 36. His doctrine of consubstantiation, 51. Rejects the belief of Zuingli, *ib.* Lutherans of Germany, less disposed than the catholics to the divorce of Henry VIII., 40.

M.

Macdonalds, their massacre in Glencoe, 608. Mackenzie (sir George), account of his *Jus Regium*, 422. Magdalen college, Oxford, expulsion of the fellows from, 460. Mass said in the chapel of, 461. Magistrates under Elizabeth inclined to popery, 74. Mainwaring (—), his assertion of kingly power, 211. Malvern priory intereaded for at the dissolution, 44. Manchester (Edward Montagu, earl of), suspected of being reluctant to complete the triumph of the parliament in the contest with Charles I., 386. Maritime glory of England first traced from the commonwealth, 323. Marlborough (John, earl of), and Sidney (earl of Godolphin), Fenwick's discoveries oblig'd them to break off their connection of perfidy, 491. — (John duke of), his

treachery, 488. Preserves a secret connection with the court of James, 545. Extreme selfishness and treachery of his character, *ib.* Marlborough (Sarah, duchess of), her influence over queen Anne, 537. Marriages ordered to be solemnized before justices of the peace, 314. Martial law, origin, benefits, and evils of, 123-124. Instances of its use, *ib.*, 125. Ordered under Charles I., 199. Restrained by the petition of right, *ib.*, 200. Martin Mar-prelate, puritan libels so called, 105. Martyr (Peter), assists the Reformation in England, 52. Objected to the English vestments of priests, 56. Mary (princess), denied the enjoyment of the privileges of her own religion, 54. — (queen of England), restores the Latin liturgy, 23. Married clergy expelled, *ib.* Averse to encroach on the privileges of the people, *ib.* Her arbitrary measures attributed to her councillors, *ib.* Duty on foreign cloth without assent of parliament, *ib.* Torture more frequent than in all former ages, *ib.* Unprecedented act of tyranny, 24. Her re-establishment of popery pleasing to a large portion of the nation, 56. Protestant services to, *ib.* Her unpopularity, *ib.* Her marriage with Philip of Spain disliked, *ib.* Cruelty of her religion productive of aversion to it, *ib.* And of many becoming protestants, 53. Use of martial law by, 124. Imposes duties on merchandise without consent of parliament, 162. — Stuart (queen of Scots), her prior right to the throne of England, 65. Her offensive manner of bearing her arms, 69. Elizabeth intrigues against, though not unfavourable to her succession, *ib.* Her difficulties in Scotland, and improper conduct, *ib.* Elizabeth's treatment of, considered, *ib.* Strength of her party claim to England, 70. Her attachment to popery, *ib.* Councils in favour of, established again & her supporters, and others in her favour, 72. Bill against her succession, 105. In 1603.

ment, and her son educated a protestant, 74. Her deliverance designed by the catholics, 79. Her correspondence regularly intercepted, *ib.* Statute intended to procure her exclusion, 80, 81. Her danger from the common people, *ib.* Reflections on her trial, imprisonment, death, and guilt, *ib.* Her regal title and privileges examined, 82. Masham (lady), in the interest of the Pretender, 546. Mass (service of the), not tolerated in England, 54. Performance of the, introduced by the act of uniformity, 21. Secretly permitted, *ib.* Massacre of the Scots in English, in Ulster, 642. Massachusetts bay, granted by charter, 236. Massey, a catholic, collated to the deanery of Christ Church, 456. *Mattew's Bible*, 1537, Coverdale's so-called, 43. Maximilian, his religion in parliament in Germany, 63, 64. Mayart (serjeant), his treatise in answer to lord Bolton, 650. Mayne (—), persecution of for popery, 75. Melville (Andrew), and the general assembly of Scotland, restrain the bishops, 594, 595. Some of the bishops submit, *ib.* He is summoned before the council for sedition in 1593, *ib.* Flees to England, 595. Members of parliament, free from personal arrest, 166, 167, 379. Merchants, petition on grievances from Spain, 160, 161. Petition against arbitrary duties on goods, 161. Merchandise, imported in 1600, not to be levied but by parliament, 162. *Book of rates* on, published, 164. Mitchell (—), committed to the Tower by the House of Commons, 162, 163. Middleton (John), *Tracts* (earl of), his petition of supplication, 164, 165. Military force in England, how raised, 164, 165, 166. — *Excise* on commodities, 165. In the reign of Charles II., 166. The parliament, 166.

1569. Its origin, 566. Established in Scotland, 602. Millenary petition, treatment of, by James I., 153. Ministers of the crown, responsibility of, 391, 550, 551. Necessity of their presence in parliament, 517. —, mechanics appointed to read the service in vacant churches, 94. Early presbyterian, of Scotland, were eloquent, learned, and zealous in the cause of the Reformation, 595. Their influence over the people, *ib.* Interfere with the civil policy, *ib.* *ist's Journal*, the printer Mist committed to Newgate by the Commons for libel in, 582. Mitchell, confessing upon promise of pardon, executed in Scotland at the instance of Archbishop Sharp, 604. Molyneux, his celebrated *Case of Ireland's being bound by acts of parliament in England stated*, 651. Resolutions of the House of Commons against his book, *ib.* Mompeyson (Sir Giles), his patents questioned, 182. Monarchy of England limited, 1, 2. Erroneously asserted to have been absolute, 144, 145. —, absolute, tendency of the English government towards, from Henry VI. to Henry VIII., 26. Not attributable to military force, *ib.* Abolished, 309. Extraordinary change in our, at the Revolution, 475. Absolute power of, defined, 570. Monasteries, their corruptions exposed by the visitations of, 42. Resignation and suppression of, 43. Feelings and effects of their suppression, *ib.* Might lawfully and wisely have been abolished, 44. Several interceded for at the dissolution, *ib.* Evils of their indiscriminate destruction, *ib.*, 45. Immense wealth procured by their suppression, *ib.* How bestowed and distributed, *ib.* Alms of the, erroneously supposed to support the poor, 46. In Ireland, in the 7th and 8th centuries, learning preserved by, 616. Monastic orders averse to the Reformation, 41. Their possessions great but unequal, *ib.* Evils of, in the reign of Henry VIII., *ib.* 42. Reformed and suppressed by Wolsey, *ib.* Visitations of the, truly reported, *ib.* Pensions given to the, on their suppression, 43. Money-bills, privilege of the Commons concerning, 144. Ancient mode of proceeding in, discussed, 488. Monk (general George), his strong attachment to Cromwell, 330. His advice to Richard Cromwell, *ib.* Observations on his conduct, 331. Takes up his quarters in London, *ib.* His first tender of service to the king, *ib.* Not secure of the army, 332. Represses a mutinous spirit, *ib.* His slowness in declaring for Charles, *ib.* Urges the most rigid limitations to the monarchy, 333. Suggests the sending the king's letter to the two houses of parliament, *ib.* His character, 337, 338. Advises the exclusion of only four regicides from the act of indemnity, 340. Monks, pensions given to, on their suppression, 43. Monmouth (James, duke of), remark on the death of, 452. — (county), right of election extended to, 445. Monopolies, nature of, victorious debate on, in the House of Commons, *ib.*, 137. Parliamentary proceedings against, 182-183. Montagu (abbé), committed by the Commons for publishing a book, 582. — (Dr. Richard, bishop of Chichester), his Roman catholic tenets, 237. His intrigues with Panzani, 239. — (lord), his speech in the House of Lords against the statute for the queen's power, 62. Brings a troop of horse to Elizabeth at Tilbury, 83. Mordaunt (lord), charges against, 371. More (Sir Thomas), his conduct upon another motion for a large grant, 10, 11. Apology for his proceedings against Wolsey, 13. Beheaded for denying the king's ecclesiastical supremacy, 17. Inclined to the divorce of Henry VIII., 39. Morice (—), attorney of the court of wards, attacks the oath *ex officio*, 109. His motion on ecclesiastical abuses, 135. His imprisonment and letter, 136. Mortmain, effect of the statute of, on the clergy, 41. Morton (John, archbishop of Canterbury), his mode of exhibiting benevolences, called "Morton's Fork," 9. Mortuaries, fees of the clergy on, limited, 38. Mountmorris (lord), conduct of Lord Strafford to, 234. Murderers and robbers deprived of the benefit of clergy, 35. Murray (William), employed by king Charles to sound the parliamentary leaders, 239. — (Mr. Alexander), arbitrary proceedings of the Commons against him, 581. Causes himself to be brought by habeas corpus before the king's bench, 584. Muthy Hill passed, 500.
- N.
- Naseby, defeat of Charles I. at, 287. Consequences of, *ib.* National debt at the death of William III., 492, note 2. Rapid increase of the, 540 and note 1. Nations, three, and three religions, in Ireland, 649. Naval transactions in the reign of William III., 423. Navy of Charles I., reasons for increasing, 221. Neville (Sir Henry), his advice to James I. on summoning a parliament, 171. Newark, charter granted to, enabling it to return two members, 446. Newbury, battle of, its consequences to the prevailing party, 279. Newport, treaty of, 301. Observations on the, *ib.* News, to publish any without authority, determined by the judges in 1680 to be illegal, 427. Newspapers, their great circulation in the reign of Anne, 573, 574. Stamp duty laid on, *ib.* Nimeguen, treaty of, hasty signature of, 390. Nine, council of, 323. Noailles (ambassador in England from Henry II. of France), unpopularity of queen Mary reported by, 56. Nobility, plant during the reign of Henry VIII., 26. Responsible for various illegal and sanguinary acts, *ib.*

Of the north, repressed by Henry VIII. and the court of Star-chamber, 29. Why inclined to the Reformation, 40. Of England become great under the Tudors, deriving their estates from the suppressed monasteries, 46. Averse to the bill against the celibacy of priests, 52. And to the Reformation, 51. Combination of the catholic, for Mary Stuart, 70.

Nonconformists, protestant, laws of Elizabeth respecting, ch. iv., 88-117. Summoned and suspended by archbishop Parker, 92. Deprived by archbishop Whitgift, 103. Increased under Elizabeth, 112. Remarks on acts against, 361. Avail themselves of the toleration held out by James II., 459.

Nonjurors, schism of the, its beginning, 431. Send forth numerous libellous pamphlets, 544.

Non-resistance preached by the clergy and enforced in the Homilies, 210.

Norfolk (John, lord Howard, duke of), confidential minister of Henry VIII., ruined by the influence of the two Seymours; execution prevented by the death of Henry, 18. Confined in prison during Edward's reign, and is restored under Mary, 10. A supporter of the popish party, 49. In prison at the death of Henry VIII., 10. Proposed union of, with Mary Stuart, 70. Character, treason, and trial of, 10, 71.

—, county of, assists to place Mary on the throne, 56. Parliamentary inquiry into the returns for, 147.

Norman families, great number of, settle in Scotland, and become the founders of its aristocracy, 537.

North of England, slow progress of the Reformation in, 53. Council of the, its institution and power, 211. Act for abolishing, 252.

— (chief justice), proclamation drawn up by, against petitions, 403.

— and Rich (sheriffs) illegally put into office, 418.

Northampton (Daniel Finch, earl of), holds offices of trust under William III., 431. Unites with the whigs against the treaty of peace, 659.

Nowell (Alexander), parlia-

mentary inquiry into his election, 147.

Noy (William), discovers an early tax imposed for shipping, 211.

O.

Oath, called *ex officio*, in the high commission court, 103. Attacked in the House of Commons, 109. Administered to papists under James I., 207. To the clergy, 1640, 259. Of abjuration, 520.

October club, generally Jacobites, 546.

Ocolampadius (John), his doctrines on the Lord's Supper, 51.

Offices, new, created at unreasonable salaries, as bribes to members of parliament, 516.

Officers of the crown, undue power exerted by, 1, 2.

O'Neil, attainted in the parliament of 1669, and his land forfeited to the crown, 613.

Onslow (speaker), his assertion of the property of the subject, 145.

O'Quigley (Patrick), his case compared with Ashton's, 529.

Orange (William, Prince of), overtures of the malcontents to, 457. Receives assurances of attachment from men of rank in England, 461.

—, invitation to him, 10. His design of forming an alliance against Louis XIV., 466, 467.

—, requested to take the administration of the government of England upon himself, 471. Vote of the convention declaring him and the princess of Orange king and queen of England, 474.

—, Ordinance, a severe one of Cromwell, 146.

—, self-dying, judiciously conceived, 287.

—, Origin of the present regular army, 146.

Orkney (countess of), receives large grants from William III., 456.

Orleans (duchess of, sister of Charles II.), her famous journey to Dover, 376.

Ormond (duke of), engaged in the interests of the Pretender, 545. His unpopularity with the Irish catholics, 645.

Overbury (sir Thomas), his murder, 120.

Oxford (university of), measure adopted to procure its judgment in favour of the

divorce of Henry VIII., 40. Attached to popery, 54. Proceedings on doctrine of non-resistance 211. Decree of the, against pernicious books, 422. Opposes the measures of James II., 451. Tainted with Jacobite prejudices, 560.

Oxford, short parliament held at, in March, 1681, 411.

— (John de Vere, earl of) fined for his retainers, 10.

— (Robert Harley, earl of), sends abbot Gaultier to marshal Berwick to treat of the Restoration, 545.

—, promises to send a plan for carrying it into effect, 10.

—, Hated by both parties, 543.

—, Impeached of high treason, 549. Committed to the Tower, 550.

—, Impeachment against him abandoned, 10.

—, His speech when the articles were brought up, 10.

P.

Paget (William, first lord), advises the sending for German troops to quell commotions, 53, note 4. His lands increased by the bishopric of Lichfield, 57.

Palatine jurisdiction of some counties under the Plantagenets, 5.

Pale, old English of the, ill disposed to embrace the reformed religion in Ireland, 612.

—, Deputation sent from Ireland to England, in the name of all the subjects of the, 617.

—, Delegates from, committed to the Tower, 10.

Pamphlets and political tracts, their character and influence on the public mind at the commencement of the last century, 574, 575, and notes 12, 13, 14.

Panzani, a priest, his report to the pope of papists in England, 219.

Pay's tracts and papers to recall the people to the gospel to the Irish, 62.

—, of English the king's

Ferdinand's interest in, 61.

—, Subsequent persecution of, 64-65.

—, Attached to the Irish church, 64.

—, Compositions of, under Elizabeth, 70.

—, More recently treated, and emigrated, 71.

—, The north and south of, and the south and north of, 71.

—, The north and south of, and the south and north of, 71.

—, The north and south of, and the south and north of, 71.

—, The north and south of, and the south and north of, 71.

—, The north and south of, and the south and north of, 71.

Executed for their religion under Elizabeth, 75. Severity against recusants productive of hypocrites, 78. Heavy penalties on, 79. The queen's death contemplated by, *ib.* Excellent conduct of, at the Spanish invasion, 83. Continued persecution of, 84. Statute restricting their residence, *ib.* Executed for safety of the government, and not their religion, *ib.* Their simple belief construed into reason, *ib.* Excluded from the House of Commons, 97. Treatment of, under James I., 206-210. State and indulgence of, under Charles I., 209, 210, 237. Inclined to support the king, 237. Report of, in England, by Panzani, 239. Contributions raised by the gentry, 245. Parker (Matthew), archbishop of Canterbury, his sentence against lady Grey, 63. Defends the church liturgy and ceremonies, 91, 92, 93, 95. His order for the discipline of the clergy, 92. Summons nonconformists, *ib.* Discussion of church authority with Mr. Wentworth, 93. Prosecutes the puritans, 99. Suppresses their "prophesyings," 100. Parliament, the present constitution of, recognised in the reign of Edward II., 3, and note 1. Of Henry VII. secures the crown to his posterity, 6. Anxious for his union with Elizabeth of York, *ib.* Power of the privy council over the members of, 31. Struggles of, against the crown, *ib.* Complaint of the House of Commons against Fisher, 38. Divorce of Henry VIII. brought before the houses of, *ib.* Address of, moved for Henry VIII. to receive back queen Catherine, 40. Influence of the crown over, 137, 138. Statutes for holding, 250. Enormous extension of its privileges, 272. Few acts of justice, humanity, generosity, or of wisdom from, manifested by, from their quarrel with the king to their expulsion, 274, 275. Offers terms of peace to Charles I. at Newcastle, 288. Deficient in political courage, 295. Eleven members charged with treason, *ib.* Duration of, proposed, 298. Has no means to withstand the power of Cromwell, 312. Is attached

to the established church, 317. New one called decidedly royalist, 350. Its implacable resentment against the vicararies, 359. Session of, held at Oxford in 1665, 361. Tendency of long sessions to form opposition in, 364. Supplies granted by, only to be expended for specific objects, 365. Stronuous opposition made by to Charles II. and the duke of York, 377. Convention dissolved, 437. Its spirit of inquiry after the Revolution, 476. Annual assembly of, rendered necessary, 500. Its members influenced by bribes, 516, and note 11. Its rights out of danger since the Revolution, 517. Influence over it by places and pensions, 566, 567. Its practice to repress disorderly behaviour, 578. Assumed the power of impeachment, *ib.* Debtors in, account of their first publication, 575. Their great importance, 576. Seat in, necessary qualification for, 577. Parliament of 1653, remarks on its behaviour, 449. — (convention), accused of abandoning public liberty at the Restoration, 334. Pass several bills of importance, 340. — (long), called back by the council of officers, 327. Expelled again, *ib.* Of seventeen years' duration dissolved, 402. Long prorogation of, 407. — of Scotland, its model nearly the same as that of the Anglo-Norman sovereigns, 587. Its mode of convocation, 588. Law enacted by James I. relating to, *ib.* Royal boroughs in the fifteenth century, 589. Its legislative authority higher than that of England, 591. Summoned at his accession by James II., acknowledges the king's absolute power, 605. — of Ireland, similar to an English one, 621. Its constitution, 637, 638. Meets in 1634; its desire to insist on the confirmation of the graces, 640. Opposition in the, to the crown, 648. — of the new protestant nation of Ireland always whig, 650. Parliamentary privilege, observations respecting, 586.

Parliament, probable effect of
Wolszky's answer for raising
supplies without their inter-
vention, 12. Bill for trial of,
479, 520. For a pamphlet,
551.

Parry (Dr. William), executed
for a plot against Elizabeth,
79.

— (Dr.), committed and expelled of, by parliament, 141.

Parsons (Sir William), and Sir John Borlase (lord justice), succeeded lord Strafford in the government of Ireland, 642.

Partition treaty, earl of Portland and lord's more the only ministers proved to be concerned in the, 516.

Party (moderate), endeavours to bring about a pacification with Charles, 175. Negotiation with the king, broken off by the action at Blenheim, 176. Three parts of the go over to the king, 178.

Passive obedience, remarks on
the doctrine of, 421.

Paul IV. (pope), his behaviour towards Elizabeth, 61.

Peacham (Rev. —), prosecution of, for a libellous sermon, 174.

Peasantry of England under the
Plantagenets, 4.

Peerage of England, probably supported the Commons against the crown, 11.

— bill, particulars of the,
552, 553.

Peerages, several conferred on

Pe

able, *ib.* Disordered state of

under Henry VI, and Edward IV., *ib.* Authority and in

fluence of abbots, &c., in the
house of, 43. Freedom of the

62. Proceedings of James I.

against, for conduct in par
liament, 188.

Palhams (the), resign their offices, and oblige George H.

to give up lord Granville
573.

Femberton (sir Francis, chief justice), unfair in all trials

relating to popery, 421. His
conduct on the trial of lord

Russell, 417, 418.
Penal statutes, power of the

unt
ys

300. Laws enforced against
some unfortunate priests, 41
Against Catholics in Ireland

- Penruddock enters Salisbury, and seizes the judge and sheriff, 317, 318.
- Perry (John, Martin Mar-prelate), tried and executed for libels against queen Elizabeth, &c., 105, 120.
- Pensioners during the pleasure of the crown, excluded from the Commons, 518.
- Permanent military force, national repugnance to, 564.
- Its number during the administration of sir Robert Walpole, *ib.* (See Army, and Standing Army.)
- Perrot (sir John), his justice in the government of Ireland, 631. Falls a sacrifice to court intrigue, *ib.*
- Persecution, religious, greater under Charles II. than during the commonwealth, 362.
- Petition of Right, its nature and proceedings in, 199-201, 216.
- and Advice, particulars of the, 321. Empowers Cromwell to appoint a successor, 325.
- Petitions, law relating to, 352, 353. For the meeting of parliament checked by a proclamation of Charles II., drawn up by chief justice North, 408. Interfering with the prerogative repugnant to the ancient principles of our monarchy, 409.
- Petre (father), with a few catholics, takes the management of affairs under James II., 456.
- Pickering (lord-keeper), his message to the House of Commons, 135.
- Pierpoint (Henry, lord), hopes to settle the nation under Richard Cromwell, 325.
- Pitt (William, earl of Chatham), the inconsistency of his political conduct, 573.
- Pius IV. (pope), his embassy to Elizabeth, 61. Moderation of his government, 62.
- Pius V. (pope), his bull deposing Elizabeth, 71. Most injurious to its own party. *ib.* His bull explained by Gregory XIII., 76.
- Place bill of 1743, 567.
- Plague in 1665, 373.
- Plan for setting aside Mary, princess of Orange, at the period of the Revolution, 457.
- Plantagenets, state of the kingdom under the, 35. Privileges of the nation under the, 4. Violence used by their officers of the crown, *ib.* Inconsiderable privileges of the peers, gentry, and yeomanry, *ib.* Their courts of law, *ib.* Constitution of England under the, 147, 253. Conduct of with regard to the government of Ireland, 624.
- Plays and interludes satirising the clergy, 48-49.
- Plunket (titular archbishop of Dublin), executed, 414. Sacrificed to the wicked policy of the court, *ib.*
- Pluralities, the greatest abuse of the church, 108. Bill for restraining, 109.
- Pole (cardinal Reginald), actively employed by the pope in fomenting rebellion in England, 17. Procures the pope's confirmation of grants of abbey lands, 57.
- Polity of England at the accession of Henry VII., 2.
- Political writings, their influence, 574, and note 13.
- Poor, the, erroneously supposed to have been maintained by the alms of monasteries, 46. Statutes for their provision, *ib.*, and note 4.
- Pope, his authority in England, how taken away, 37-41. His right of deposing sovereigns, 76.
- Popery preferred by the higher ranks in England, 56. Becomes disliked under queen Mary, 57.
- Popish plot, great national delusion of the, 398.
- Popular party, in the reign of Charles II., its connection with France, 385.
- Population, state of, under the Plantagenets, 5.
- Portland (William Bentinck, earl of), receives large grants from William III., 496.
- Power, despotic, no statutes so effectual against, as the vigilance of the people, 571.
- Poyning's Law, or Statute of Drogheda, provisions of, 625. Its most momentous article, 626. Bill for suspending, 632. Attempts to procure its repeal, 650.
- Predestination, dispute on, 204-206.
- Prerogative, confined nature of the royal, 1, 2. Strengthened by Henry VII., 7. Unconstitutional exercise of the, by Charles I., 210. Of a catholic king, act for limiting the, 425, 426. Of the kings of England in granting dispensations, 451.
- Prejudice, against the house of Hanover, 562, 563.
- Presbyterians, their attempt to set up a government of their own, 106. Erroneous use of scripture by, 114. Consider the treaty of Newport as a proper basis for the settlement of the kingdom, 114. Deceived by the king, 355. Remarks on Charles II.'s conduct to, 359. Implore his dispensation for their non-conformity, *ib.*
- Presbyterian party, supported by the city of London, 294. Regain their ascendancy, 301. Ministry solicit a revision of the liturgy, 348. Clergy of Scotland, their power and attempts at independence, 591-595. Restrained by James VI., 596. Intermeddle again with public affairs, *ib.*
- discipline of the Scottish church, restored, 599.
- Presence, the real, zeal of Henry VIII. in defending, 47. Principal theories concerning the, 51-52. Believed in England in the seventeenth century, 237.
- Press, liberty of the, 524.
- Pretender (James Stuart, the), acknowledge king of England by France, and attainted of high treason by parliament, 520. Has friends in the tory government, 349. Lands in Scotland, and meets with great success, 349. Invades England, *ib.* The king of Sweden leagues with, 60. His restoration, 554. Becomes master of Scotland and advances to the centre of England, 562. Rebels of 1745 conclusive against the possibility of his restoration, *ib.* Deceit by his own party, *ib.* Installs in France, *ib.*
- Priests, antiquity and evils of their celibacy, 52. Catholics resigned or deprived under Elizabeth, 60. Catholic persecution for harbouring and supporting, 64. The most essential part of the Romish ritual, 65. Secret transgressions of the priests, 65. Orders with sectarianism, 65. Ordered to depart from England lest they acknowledge the queen's allegiance, 24.
- and Jesuits, banished from England, 60, 76. Banished from 72.
- (protestant) banished, 60. Ordered under Elizabeth, 76. Lord Burleigh's declaration of their persecution, 77.

quit the kingdom,

omish), in Ireland,
in a conspiracy with
rt of Spain, 633. Or-
quit Ireland by pro-
tion, 634.

f Wales (son of James
uspicious attending the
of, unfounded, 463.

es of toleration fully
lished, 560.

g, bill for the regula-
of, 425.

and bookselling, regu-
l by proclamations, 122.

ers of war made amen-
to the laws of England,

ge, breach of, members
parliament committed for,

d. Punishment of, ex-
cluded to strangers, *ib.*

ver so frequent as in the
ign of William III., 579.

- of parliament, discussed,

37. Not controllable by
courts of law, 580. Import-

ant, the power of commit-
ting all who disobey its

orders to attend as witnesses,

582. Danger of stretching
too far, 584-585. Uncontrol-

lable, draws with it unlimited
power of punishment, 585.

Privy council, illegal jurisdic-
tion exercised by the, 29.

The principal grievance un-
der the Tudors, *ib.* Its prob-

able connexion with the
court of Star-chamber, 29-30.

Authority of the, over par-
liament, 31. Illegal commit-

ments of the, under Eliza-
beth, 121. Power of its

proclamations considered, *ib.*,
122. All matters of state

formerly resolved in, 178.
Its power of imprisoning,

196-198. Without power to
tax the realm, 224. Of Ire-

land, filled with Catholics by
James II., 646.

— Seal, letter of, for bor-
rowing money, 126-196.

Proceedings against Shaftes-
bury and College, 413.

Proclamation, controlling the
subject's right of doing all

things not unlawful, 4. Of
the sovereign in council.

authority attached to, 121.
Unwarranted power of some

of those under Elizabeth,
121, 122. Of martial law

against libels, &c., 124. Of
James I. for conformity, 154.

For summoning his first
parliament, *ib.* House of

Commons' complaint again-t,

167. Debate of judges, &c.,
on, 171. Illegality of, *ib.*
Issued under Charles I., 225,
226.

Projects of lord William Rus-
sell and colonel Sydney, 417.

Prophecysings, religious exer-
cises so called, 106. Suppres-

sion of, *ib.* Tolerated by
some prelates, *ib.*

Propositions (the nineteen),
offered to Charles I. at York,

270.

Protestants, increased by Mary's
persecution, 58. Origin of the

differences between, 88. Emi-
gration of, to Germany, 89.

Dislike of, to the English
liturgy and ceremonies, 89.

91. Dissenters, bill to re-
lieve, lost off the table of

the House of Lords, 506.
Succession in danger, 545.

546. Church established by
Elizabeth in Ireland, 629.

Many of the wealthier fami-
lies conform to the, 648.

Protestantism, dissolution of
the monasteries essential

to its establishment, 44.
Strengthened by the distri-

bution of their revenues,
&c., 45. Slow progress of,

in the north of England, 53.
Protestation of the House of

Commons against adjourn-
ment in 1621, 187.

Prynne (William), prosecution
of, by the Star-chamber, 230.

Pukency (Mr.), his remark on
the standing army, 565.

Purgatory, doctrine of, abo-
lished by the reformers, 50.

Puritans address Elizabeth
against the queen of Scots,

72. Laws of Elizabeth res-
pecting, chap. iv. 88-113.

Rapid increase of, under
Elizabeth, 91. Begun to form

conventicles, 93. First in-
stance of their prosecution,

ib. Supporters and opposers
of, in the church and state,

ib. Their opposition to civil
authority in the church, 94.

Not all opposed to the royal
supremacy, 96, 97. Predo-

minance of, under Elizabeth,
97. Prosecuted by the pre-

lates, 99. Partly supported
by the privy council, *ib.*,

100. Deprived by archbishop
Whitgift, 102. Lord Bur-

leigh favourable to, 103,
104. Libels published by,

105. Their church govern-
ment set up, 106. Danger-

ous extent of their doctrines,
ib. Their sentiments on

civil government, *ib.* Severe
statute against, 110. Civil

liberty preserved by the,

119. Summoned to a confer-
ence at Hampton Court, 153

Alarmed at the king's pro-
ceedings, 156. Ministers of

the, deprived by archbishop
Bancroft, 202. Difference

with the sabbatarians, 203.
Purveyance, abuses of 157. Pro-
ceedings of parliament

against, *ib.*, 252. Taken
away, 345.

Q.

Quartering of soldiers (com-
pulsory), treason of, 256.

R.

Raleigh (sir Walter), instance
of his flattery of monarchy,

144. His execution, charac-
ter, and probable guilt con-

sidered, 181. His first suc-
cess in the Munster colo-

nies, 635.

Reading, a Romish attorney
trial of, 400.

Real presence denied in the
articles of the church of Eng-

land, 52.

Rebellion (northern), excited
by the harsh innovations of

Henry VIII.; appeased by
conciliatory measures, but

made a pretext for several
executions of persons of

rank, 17. In Ireland, in
1641, 637, 642. Success of

the insurgents in the, *ib.*
Of 1690, forfeitures on ac-

count of the, 647.

Recusancy, prosecutions for,
under Elizabeth, 63. Heavy

penalties on, under Eliza-
beth, 75.

Recusants, severity against,
productive of hypocrisy, 78.

Statute restraining their re-
sidence, 84.

Reed (alderman Richard), his
treatment for refusing to

contribute to the benevo-
lence in 1545, 14.

Reeves (John), his 'History
of English Law, character

of, 33, *note.*

Reformation of the church
gradually prepared and ef-

fectuated, 34. Disposition of the
people for a, 40. Uncertain

advance of the, after the
separation from Rome and

dissolution of monasteries,
47. Spread of, in England,

ib., 48. Promoted by trans-
lating the Scriptures, *ib.*

Principal innovations of

- the, in the church of England, 49-52. Chiefly in towns and eastern counties, of England, 53. German troops brought over at the time of, *ib.*, note 6. Measures of, under Edward VI., too zealously conducted, 53. Toleration not considered practicable in the, 54. Its actual progress under Edward VI., 56.
- Reformers, their predilection for satirical libels, 105. Of Scotland, their extreme moderation, 594.
- Refugees, popish, their exertions against Elizabeth, 71, 72, 74.
- Regalities of Scotland, their power, 591.
- Regicides, execution of the, 342. Some saved from capital punishment, 351.
- Religion, reformation of, gradually prepared and effected, 34. State of, in England, at the beginning of the sixteenth century, *ib.* Different restraints of governments on, 54. Roman catholic, abolished in Scotland, 592.
- Religious toleration, 506, 507. Infringement of, 558.
- Remonstrance on the state of the kingdom under Charles I., 262.
- Republican party, first decisive proof of a, 303. Composed of two parties, levelers and anabaptists, 312. Government by, ill-suited to the English in 1659, 328. No, in the reign of William III., 487.
- Restitution of crown and church lands, 342.
- Restoration of Charles II., remarks on the unconditional, 334. Popular joy at the, 339. Chiefly owing to the presbyterians, 351.
- Revenue, settlement of the, 483. Surplus, in Ireland, dispute between the Commons and the government concerning its appropriation, 652.
- Revolution in 1633, its true basis, 455. Its justice and necessity, 464. Argument against it, 465. Favourable circumstances attending the, 467, 468. Salutary consequences resulting from the, 469. Its great advantage, 470. Its temperate accomplishment, 480. In Scotland, and establishment of presbytery, 606.
- Richard II., statute of, restraining the papal authority, 38. Supply raised under, 223. His invasion of Ireland, 623.
- Richmond (Charles Stuart, duke of), his marriage with Miss Stewart, 367.
- Park extended, 220, note 2.
- Ridley (Nicholas, bishop of London), liberality of, to the princess Mary, 54. Firmness of, in the cause of lady Jane Grey, 55. Moderation in the measures of reform, *ib.*
- Right of the Commons as to money bills, 144, 438.
- Robbers and murderers deprived of the benefit of clergy, 35.
- Rochester (Laur. Hyde, lord), his dismissal, 456.
- Rockingham Forest increased, 220.
- Roman catholic prelates of Scotland, including the regulars, allowed two thirds of their revenues, 594.
- Romish priests, address to the king to send them out of the kingdom, 360. Their policy, 378. Superstition, general abhorrence of the, 451.
- Root and branch party, 260.
- Ross (Thomas), executed for publishing at Oxford a blasphemous libel, 601.
- Royal families of Ireland (O'Neal, O'Connor, O'Brien, O'Malachin, and McMurrough), protected by the English law, 620.
- power, its constitutional boundaries well established, 424.
- Royalists, declination of the, by Cromwell, 318. Discontent of the, 343.
- Rump, the parliament commonly so called, 311.
- Rupert (prince), Bristol taken by, 278. And Newcastle defeated at Marston Moor, 283. Consequences of the same, *ib.*
- Russel (Admiral), engaged in Intrigue, 438. His conduct at the battle of La Hague, and quarrel with the board of admiralty, *ib.* Parliamentary inquiry into their dispute, 497.
- Russell (lord), sincerely patriotic in his clamorous intercourse with France, 356. And the earl of Essex, concert measures for a resistance to the government, 416, 417. They receive from two councils of Shaftesbury, *ib.* Evidence on his trial not admitted to justify his conviction, *ib.*
- Rye-house plot, 393.
- Ryswick (treaty of), particulars relating to, 491, 494.
- S.
- Sabbatarians, origin and tenets of, 203.
- Salisbury (countess of), her execution, causes of, 17.
- (Robert Cecil, earl of), extenuates the wrongs imputed to Spain, 161. His scheme for procuring an annual revenue from the Commons, 167. His death and character, 169.
- (William Cecil, earl of), his forest amendment, 220.
- Sancroft (Thomas, archbishop of Canterbury), his scheme of comprehension, 507.
- Sandys (sir Edwin), his speech on the impeachment of Middlesex, 190.
- Savoy, conference at the, in 1661, 355. Antimosity between the parties, *ib.* Conduct of the churchmen not justifiable, *ib.* Only productive of more exaggerated dissension, 356.
- Scambler (Edmund, bishop of Norwich), his character, 112.
- Scandinavia, colonists from, settle on the coasts of Ireland, 613, 614.
- Scheme of comprehension and indulgency, 372. Objections on the, 507.
- Schemes in the constitutional party under Charles I., 262.
- Of the nonjurors, 528, 529.
- Scotland, uncertain succession of the English crown in the royal family of, 65, 66. Its claims notwithstanding Presbyterian church government established in, 107. Union with England broadcast, 159. Frictions commenced in, 144. Privy council, abolished, 534. Its early state wholly Catholic before the twelfth century, 527. Its want of records, 528. Its wealth, 592. Character of its history from the Reformation, 571. Church of, and preservation of the forms of the catholic worship, 594. Roman catholicism, 595, 596. Civil and ecclesiastical institutions during the last war in Scotland, 601. Character of its history from William and Mary, 606.
- Scots, the, account of, 11

Charles I., 292. Conclude a treaty with Charles, and invade England, 300.
 —, presbyterians sincerely attached to king Charles, 95.
 —, type, English translation of, proscribed, 48. Permitted to be read, *ib.* Effect of their general use, *ib.*
 —, great, lord keeper Littleton carries it to the king, 179. New one ordered to be made by the parliament, *ib.*
 —, acts in parliament, sale of, 177.
 —, secret corruption, 567.
 —, — historical documents brought to light by Macpherson and Dalrymple, 482.
 —, — service money disposed of to corrupt the parliament, 516.
 —, — treaty of 1670, particulars relating to, 375. Differences between Charles and Louis as to the mode of its execution, 376.
 —, —, ctaries, persecution or toleration the only means of dealing with, 104.
 —, —, lden (John), summoned before the Star-chamber, 180.
 —, —, pts of the north of Ireland, liberty enjoyed by, 619. Of Munster and Leinster, their oppression, *ib.* Offers made by some, for permission to live under the English law, 620.
 —, —, rjointment of the House of Commons, authority of the, 140-142.
 —, —, ssion, court of, of Scotland, its origin and judicature, 592.
 —, —, ttlement, act of, rights of the reigning monarch emanate from the parliament and people, by the, 470.
 —, —, of the revenue, 344.
 —, —, ymour (lord), of Sudeley, courts the favour of the young king, Edward VI., 21. Entertains a hope of marrying princess Elizabeth, *ib.* Accused of treason, and not heard in his defence, *ib.*
 —, —, (William, marquis of Hertford), married to lady Arabella Stuart, 180.
 —, —, aatesbury (Anthony, third earl of), declaration of indulgence projected by, 380. Fall of, and his party, 382. Bad principles of, 404. Desperate counsels of, 417. Committed to the Tower with three other peers, by the Lords for calling in question the legal continuance of parliament,

after a prorogation of twelve months, 583,
 Shaftesbury and Colledge, impeachment of, 413.
 Sharp (James), archbishop of St. Andrew's, an infamous apostate and persecutor, 604.
 Shepherd (Mr.), expelled the House of Commons, 204.
 Sherlock (Dr.), his work entitled *Case of Resistance to the Supreme Powers*, 421.
 Ship-money, its origin and imposition, 221. Extended to the whole kingdom, *ib.* Trials concerning, 222. Case of Hampden, *ib.*, 223. Declared illegal, 250.
 Shiriey (sir Thomas), parliamentary proceedings on his arrest, 155, 156.
 —, — (Dr.), and sir John Fagg, case between, 437.
 Shrewsbury (earl of), engaged in intrigues, 488.
 Siblethorp (—), his assertion of kingly power, 211.
 Sidney (sir Philip), writes a remonstrance against Elizabeth's match with the duke of Anjou, 120.
 —, — (Algernon), receives pecuniary gratifications from France, 387. Was a distressed man, 389. His dislike to the Prince of Orange, *ib.* His conviction illegally obtained, 418. Observations on his character and conduct, 419.
 —, — (sir Henry), his representation to queen Elizabeth of the wretched condition of the Irish, 631. His second government in Ireland excites resistance by an attempt to subvert the liberties of the pale, 632.
 Silenced preachers set at liberty, 92, note 3.
 Six articles, law of, on the celibacy of priests, 52.
 Skinner (Thomas), ease of, against the East India Company, 435. Committed by the Commons for breach of privilege, 436.
 Smith (sir Thomas), his Treatise on the Commonwealth of England, cited concerning the Star-chamber, 27. His account of causes belonging to the court of Star-chamber, 29, 30. His natural son sent with a body of English to settle in Ireland, 635.
 Soap, chartered company for making, 220.
 Somers (lord chancellor), puts the great seal to blank powers, 498.

Somers, Halifax, Wharton, Oxford, and Sunderland, kept out of administration by the dislike of queen Anne, 537.
 Somerset (Edward Seymour, duke of), obtains a patent constituting him protector; discovers a rival in his brother, lord Seymour, 21. Deprived of his authority, 22. Accused of a conspiracy to murder some of the privy councillors, *ib.* Evidence not insufficient, *ib.* Inclined to the Reformation, and powerful in the council, 49. His destruction of churches to erect his palace, 53, 54. Designed the demolition of Westminster Abbey, *ib.*
 —, — (Robert Car, earl of), his guilt of the murder of Overbury examined, 180, 181.
 Someville, executed for a plot against Elizabeth, 79.
 Southampton (Thomas Wiltshiresley, earl of), his estate in the New Forest seized, 220. His opposition to the statute against nonconformists, 361.
 Sovereigns, their inviolability to criminal process examined, 82. Their power weakened by the distinction of party, 572.
 Spain, dislike of the English to, under queen Mary, 57. King James's partiality for, 160. Connexion with England under James I., 169. His unhappy predilection for, 181, 182. Treaty of royal marriage with, 188, 189. Decline of the power of, after the treaty of the Pyrenees, 372.
 Speech, freedom of, in parliament, 217.
 Spenser (Edmund), his *Account of Ireland*, 631, note 6, 635. The first three books of his *Faery Queen*, where written, *ib.*
 Spies should be heard with suspicion in cases of treason, 502.
 Sports, declaration of, by James I., 203. By Charles I., 236.
 Sprot, a notary, executed in Scotland for concealing letters, 601.
 Stafford (William Howard, lord), convicted of the popish plot, 401.
 Standing army, without consent of parliament, declared illegal, 479, 480. National repugnance to its rise, 565.
 Standish (Dr. —), denies the divine privileges of the clergy, 35.
 St. Bartholomew (day of)

- 2,000 persons resign their preferments, 357.
- St. Germain's (court of), preserve a secret connexion with Godolphin and Marlborough, 545.
- St. John (Oliver), declines to contribute to the benevolences, 174. His arguments in behalf of Hampden, 223.
- St. Paul's Cathedral, proposed improvement of, 226.
- Star-chamber (court of), the same as the ancient *Concilium Regis*, or *Ordinarium*, 28. Account of the powers of, *ib.* Augmented by Cardinal Wolsey, 29. Original limitation and judges of the, 30, and *note* 19. Causes within the cognizance of the, 30. Its arbitrary and illegal powers, *ib.* Not the court erected by Henry VII., *ib.*, *note* 19. Examination of papists in the, 64. Security of the, 118. Power of, 121. Instances of its extended authority, 179. Informations in the, against London, 226. Jurisdiction of the, 227, 228. Offences belonging to, 227. Mode of process in the, 228. Punishments inflicted by the, *ib.* Fines and sentences of the, 229. Corrupt and partial, *ib.* Act for abolishing, 251. Attempt to revive the, 354.
- State, Council of, consists of forty-one members, 310. Tests proposed to the, to which only nineteen subscribed, 354.
- Stationers, company of, power given to, over printers and booksellers, 123.
- Statute of the 15th Edward II., recognising the existence of the present constitution of parliament, 3, and *note* 1. Of 11th Henry VII., protecting persons in the king's service, 7. Extraordinary, giving to Henry VIII. all moneys paid by way of loan, &c., 13. Similar act releasing to him all moneys he had subsequently borrowed, *ib.* 11th Henry VII. for payment of arrears of benevolences, 8, 9, and *note* 1. Of fines enacted by Henry VII. merely a transcript from one of Richard III., 32, *note*. Object of this enactment, *ib.* Of Edward I. *de donis conditionalibus*, *ib.* Revived under Henry VII., and their penalties enforced, 9. Of 1st Henry VIII. for amendment of escheats, 10. Of 11th Henry VII. giving power to justices of the peace, *ib.* Of Henry VII. concerning the court of Star-chamber, 30. Of Henry VI. for compelling clerks to plead their privilege, 35. Of 4th Henry VII. for branding clerks convicted of felony, *ib.* Of Richard II. restraining the papal jurisdiction, 38. Of Henry VIII. taking away appeals to Rome, 39. Of 11th on the consecration of bishops, *ib.* Of mortmain of Edward I. and III., 41. Of Henry VIII., 1st Edward VI., 14th Elizabeth, for the support of the poor, 46 and *note* 1. Of 2nd, 3rd, and 6th of Edward VI. on the celibacy of priests, 52. Of 2nd and 3rd Edward VI. against hearing mass, 54. Of supremacy and uniformity, 1st of Elizabeth, 63, 87, *note*. For the assurance of the queen's power, 62. Opposed by Mr. Atkinson and lord Montagu, *ib.* Of 8th of Elizabeth on behalf of the bishops, 63. Of 25th and 35th Henry VIII. on the succession, 65. Of 13th of Elizabeth, on altering the succession, 68. 13th Elizabeth, against papists, 72. Of 23rd ditto, against recusancy, 75. Of 25th Edward III. against treason, *ib.* Of Elizabeth, commanding papists to depart the kingdom, 78. Of 27th Elizabeth, for her security, &c. Of 33rd Elizabeth, restricting the residence of popish recusants, 84. Of 13th Elizabeth, for subscribing church articles, 98. Of 23rd Elizabeth, against seditious books of seminary priests, written against the puritan libels, 105, 110. Of 35th Elizabeth, for imprisoning nonconformists, *ib.* Of 1st of Elizabeth, restraining the grant of ecclesiastical lands, 111. Of *Confirmatio Chartarum* and *Magna Charta*, 162. Of 15th Edward III. against new customs, 163, 164. Of 34th Henry VIII. for court of council of Wales, 167, *note* 1. Of 34th of Henry VIII. on making laws for Wales, 172. Of 1st and 3rd Charles I. for observance of Sunday, 204. Of 4th Edward III. for building parliaments, 250. Of 16th Charles I. for abolishing court of Star-chamber, &c., 251, 252. For determining forests, restraining purveyance, amending the stannary courts, levying troops, 251. Of 1st and 25th of Edward III., amending military service, 266. Of Winchester, for defence of the nation, 267. Of Edward III., constructive interpretation of, by chief justice Kyre, 303. Of 14th making in Scotland, 600. English, question on their validity in Ireland, 652.
- Statute of Kilkenny, its influence on the government of Ireland, 655, *note* 2.
- Statutes, Irish, account of the, 622. English, extended to Ireland, 625.
- Stawell, a gentleman of Devonshire, refuses compliance to the speaker's warrant, 411.
- Steele (sir Richard), expelled the House of Commons for writing a pamphlet reflecting on the ministry, 573.
- Stewart (Miss), her marriage with the duke of Richmond, 367.
- Stone (primate of Ireland), his great share in the government of Ireland in the reign of George II., 643.
- Storie (John), his commitment by authority of parliament, 141.
- Stow (John), his library and, 123.
- Stratford (Thomas Wentworth, earl of), character of, 232. Made president of the council of the north, 235. Lord deputy of Ireland, *ib.* His correspondence with archbishop Leake, 234. His administration and use of parliaments, 235. His inspection of, 236. His justice administered, 238. His administration of Ireland, 617, 642. His six subsidies, *ib.*
- Strangers amenable to law wherever they dwell, 62.
- Strickland (Mr.), his alteration of the abuses of the charter of England, 37. His appointment as a seat in the House of Commons, 131. He lived to the 15.
- Stratford (John), his appointment as a seat in Ireland, 617, 618. His appointment as a seat in the House of Commons, 131. He lived to the 15.
- Stuart (Charles I.), his appointment as a seat in the House of Commons, 131. He lived to the 15.
- Stuart (Charles I.), his appointment as a seat in the House of Commons, 131. He lived to the 15.

Stuart, Henry VII., Henry VIII., Elizabeth, and the four kings of the house of, master-movers of their own policy, 570.

— papers in the hands of Queen Victoria, 561, *note* 2. Stubbe, his pamphlet against Elizabeth's marriage with the duke of Anjou, 120.

Subsidies, popular aversion to, 8. Grant of, in 1593–1601, 137. Less frequent in Scotland than in England, 590.

Succession, difficulties in regard to the, created by Henry's two divorces, 19. Princesses Mary and Elizabeth, nominated in the entail after the king's male issue; crown devised to the heirs of Mary, duchess of Suffolk, to the exclusion of the royal family of Scotland, *ib*.

Suffolk (family of Brandon, duke of), successor of the crown settled in, 66, 68, 149. Title of, nearly defeated by Elizabeth, 67. Descendants of, living at the death of Elizabeth, 151, 152.

— (Edmund de la Pole, earl of), conspires against Henry VII., attainted, flies to the Netherlands, given up by the archduke Philip on condition of safety: Henry VIII. causes him to be executed, 15, 16.

—, county of, assists in placing Mary on the throne, and suffers greatly from her persecution, 56.

Sunday, differences on the observance of, 203. Statutes for, 204.

Sunderland (Robert Spencer, earl of), enters into secret negotiation with the prince of Orange, 458. Reproached for his conduct in the peerage bill, 553.

Supply to the crown, ancient mode of, 438. The Commons are the granting and the Lords the consenting power, 439. Present practice of, *ib*.

Supplies, origin of the estimates of, 365. Remarks on the appropriation of, 484, 485.

Supremacy of the church given to Henry VIII., 39. Difficulty of repealing the act of, under Queen Mary, 57. Restored to the crown under Elizabeth, 60. Character and power of the act of, 60, 61. Act of, links the church with the temporal constitution, 38. The sovereign's, rejected by Cartwright and

the puritans, 94. Acknowledged by some of the puritans, 107. Act of resistance of the Irish to it, 628. Oath of, Catholics murmur at the, 634. Imposed on the Commons by the 5th of Elizabeth, never adopted by the Irish parliament, 648. Resolution of Commons of Ireland to exclude those who would not take the oath of the, *ib*.

Surrey (Thomas Howard, earl of) futile charges against, of the crime of quartering the royal arms, 18. Ignominious behaviour of his father, *ib*.

Sussex (Henry Ratcliffe, earl of), writes to the burgesses of Yarmouth and others, requesting them to vote for the person he should name, 25.

Sweden (king of), leagues with the Pretender, 554.

Swift (Dr. Jonathan), employed by government to retaliate on libellers, 504.

T.

Talbot (lord Chancellor), bill to prevent smuggling strongly opposed by him, 569. His arguments against it, *ib*.

Tanistry, law of, defined, 614. Strong inducement of the native Irish to preserve the, 620. Custom of, determined to be void, 634.

Tax upon property in the reign of Henry VIII., 11. Discontents excited by it, *ib*. Opposed tumultuously, and finally abandoned, *ib*, 12.

Taxation under Henry VII., mode of, 8. Arbitrary, under the two Henries, 15.

—, arbitrary, restrained by the Petition of Right, 200, 224.

Taxations not attempted by Elizabeth, 125.

Taxes not to be levied in England without consent of parliament, 161, 162. Larger in amount in the reign of Charles II. than at any former period, 362.

Temple (sir William), new council formed by, 407, 408.

Test act, dissenters give their support to the, 382.

Testament, New, 1526, translated into English, and proscribed, 48.

Thompson (Richard), taken into custody for preaching virulent sermons at Bristol,

and impeached upon strange charges, 410.

Thorough, a phrase used by archbishop Laud and the earl of Strafford to express their system of government, 234.

Tindal (William), his translations of the Scriptures, 48. Tithes, subsisted during the commonwealth, 346.

Toleration, religious, 506. Act, a measure of religious liberty, 507. No part of the, extended to papists or such as deny the Trinity, *ib*. Anti-toleration statutes repealed by the whigs, 559, 560. Natural right of the Irish, 634.

Tonnage and poundage, granted to Henry VIII. by his first parliament, mistaken assertion of Hume and Lingard respecting it, 11, *note* 7. The king's right to, disputed, 201.

Topham (serjeant at arms), actions brought against him for false imprisonment, 583.

Torture, use of, denied by the judges, 219. Instances of, in England, *ib*.

Tortures, used under the house of Tudor, 76. Under Elizabeth, denied by lord Raleigh, 77.

Tory principles of the clergy, 420. Ministry annoyed by the vivacity of the press, 574.

Tories, their inconsistency, 534. Ill received at court, and excluded from office, 537.

Toryism, its real character, 409. Cardinal maxim of, *ib*.

Towns, chartered, their jurisdiction, 5.

Tracts, political, extraordinary number published from the meeting of the long parliament, 425.

Trade, foreign, proclamation of Elizabeth restricting, 122.

Transubstantiation, persecutions concerning, 47. Metaphysical examination of, 512.

Treason, consideration of the law of, as applied to the papists under Elizabeth, 8. Trials for, unjustly conducted under Elizabeth, 110, 120. Perversion of the law of, under James I., 174, 175. Law of, 500, 525. Statute of Edward III., 525. In constructive interpretation and material omission, 2. Various strained constructions,

Westmoreland (Mildmay Fane, earl of), his forest amercement, 220
 Whig and tory, first heard of in the year 1679, 407. Their first meeting, 408. Necessity of accurately understanding their definition, 531. Their distinctive principles, *ib.* 532. Changes effected in them by circumstances, *ib.*
 Whiggism, genuine, one of the tests of, 499.
 Whig party, justified in their distrust of Charles II., 414
 Whigs, remarkable triumph of the, 471. Their influence in the councils of William III., 482. Oppose a general amnesty, *ib.* Bold measure of the, 547. Come into power, 548
 Whitelock (sir James), cited before the Star-chamber, 179
 Whitgift (John, archbishop of Canterbury), orders given to, concerning papists in Denbigh, 73, 74 His answer to Cartwright, 102. Rigour of his ecclesiastical government, *ib.* *Ex officio* oath tendered by, 103. His intercession for Udal, 106. Murmurs at subordination to lawyers, 109. His exclamation at Hampton Court, 598
 Wicliffe (John), effect of his doctrines in England, 34
 Wildman (major), unites the republicans and royalists against the power of Cromwell, 317
 Wilford (sir Thomas), Elizabeth's illegal commission of martial law to, 124, 125.
 Wilkins (bishop), opposes the act for suppressing conventicles, 378.
 WILLIAM the CONQUEROR, capacity of his descendants to the seventeenth century described, 570.
 — the Lion, statutes ascribed to him, 587.
 — III. receives the crown conjointly with his wife, 475 Discontent with his government, 480 His character and errors, 481, 482 His government in danger, 481. His dissatisfaction, 486 His magnanimous and public-spirited ambition, *ib.* Dissolves the convention parliament, and gives his confidence to the tories, 487, 488. Scheme for

his assassination, 490. His magnanimous conduct, 491. Unjustly accused of neglecting the navy, 493. Aware of the intentions of Louis XIV. on the Spanish dominions, 494. 700,000*l.* granted him during life, 495. Leaves a sealed order to keep up the army, *ib.* Obligated to reduce his army, and send home his Dutch guards, *ib.* His conduct censurable with regard to the Irish forfeitures, 495, 496. Unpopularity of his administration, 497. His conduct with respect to the two treaties of partition, 498 His superiority over the greatest men of the age, 499 Improvements in the English constitution under him, *ib.* His statute of treason, 500 Hatred of the tories to, 510. Distinction of the cabinet from the privy council during his reign, 513, 514 Reservedness of his disposition, *ib.* His partiality to Bentinck and Keppel not consistent with the good sense and dignity of his character, 515 Influences members of parliament by bribes, 516. Refuses to pass a bill for rendering the judges independent, 519 Truly his own minister, 570 Never popular in Scotland, 608. The only consistent friend of toleration, *ib.*
 Williams (Dr John, bishop of Lincoln), fined by the Star-chamber, 229. Made lord keeper 232.
 Wills, fees of the clergy on the probates of, limited, 38.
 Winchester, statutes of, on defence of the nation, 167.
 Wines, duties imposed on their importation, 162, 163.
 Wood, proclamation of Elizabeth prohibiting its culture, 122.
 Wolsey (cardinal Thomas), his motion for a supply amounting to 800,000*l.* to be raised by a tax on lands and goods, 10. Opposed by the Commons, 11 His arbitrary modes of raising money without the intervention of Parliament, *ib.* Obloquy incurred by these measures, *ib.* Estimate of his character, 12 Articles against him never intended

to be proceeded upon by the king, 13, *note* 8. Cause of the duke of Buckingham's execution, 16, and *note* 12. Augments the authority of the court of Star-chamber, 29. A delegate of Clement VII. on Henry VIII.'s divorce, 37. His reformation and suppression of the monastic orders, 42. Did not persecute, but proscribed heretic writings, 48.
 Wool, &c, ancient unjust tolls on, 163, 164.
 Worcester, victory of, its consequences to the future power of Cromwell, 310

Y.

Yelverton (Mr.), his defence of the privileges of parliament, 131
 Yeomen of the guard, establishment of the, 266
 Yeomanry of England, under the Plantagenets, described, 4.
 York, council of, summoned, 248.
 — (James, duke of) Suspected of being a catholic before the Restoration, 358. His marriage with lady Anne Hyde, 366. Converted to the Romish faith, 374 Particulars relating to his conversion, *ib.* 375. Always strenuous against schemes of comprehension, 378. Obligated to retire from the office of lord admiral, 381. Dangerous enemy of the constitution, 384. His accession to the throne viewed with great apprehension, 402. Engaged in a scheme of general conversion, 403 Resolved to excite a civil war rather than yield to the exclusion, 405. Plan for banishing him for life, 406. His unpopularity among the middling classes, 409 His tyranny in Scotland, 603.

Z.

Zeal, religious, in Scotland, its furious effects, 592.
 Zwingle (Ulric), his belief concerning the Lord's Supper nearly fatal to the Reformation, 51.